REMARKS

ON THE

DEAN OF FACULTY'S LETTER

TO THE

LORD CHANCELLOR.

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REMARKS, &c.

KNOWING that this Pamphlet must draw forth arguments and explanations from not a few who are better entitled and better qualified than I am to discuss the important points of civil law and church polity to which it refers, I would not probably have entered into the strife which it provokes, but for the somewhat unexpected prominency which has been given to certain opinions which I have avowed, and to the language which I have used in defending them. Nor would even this consideration have prevailed over my reluctance to engage in this department of the controversy, if I had not found my sentiments, and my manner of advocating them, identified to a great degree with the plans and principles of an entire section in the Church, whom I do not presume to represent, but with whom it is my privilege, in these public affairs, to act. In the exposition of their principles and the forwarding of their plans, I have taken the part which circumstances, and the accident of my being a member of last Assembly, seemed to call upon me to take. But for all that I have said I am myself responsible. And I have no desire that the treatment of a great public measure should be mixed up with any minute and captious analysis of my sentences, or the fragments of my sentences, culled out of the speeches of a public meeting or debate, with no regard to the occasion, and no just explanation of the context. The learned Dean seems to fasten upon me as, in a manner, the Froude of this quasi-Oxford conspiracy, (p. 23,)—the simple and unwary member—the raw recruit—who lets out, in his unpractised candour, more than the others would quite approve of, (p. 117,)—who prematurely discloses the extreme views of his associates. I am complimented on my artless openness and frankness, (p. 121,) at the expense of my experience in what the Dean of Faculty regards as the standing practices and artifices of debate. I cannot certainly return the compliment. I might perhaps reverse it. In the pleading of our great opponent, there is enough, at least, of the 'practised debater.' There is the happy art of accumulating all manner of presumptions against his adversaries, assigning the worst motives, and putting the worst construction on all their sayings and doings. There is little that can expose him to the suspicion of being too candid and too honest.

I pass over several instances of the 'practised debate,' on which, if there were leisure, I might be tempted to enlarge. The art, for example, of quietly representing the admission of the Ministers of

Chapels of Ease into our Church Courts, as one of the causes of the violent measures now adopted, whereas the law against intrusion was carried in the Assembly just two days before the passing of the Chapel Act, (p. 145, &c.;) the notable contrivance, (if it be not a 'blunder') by which the body of Seceders recently received into our communion, are made to adopt as their terms of union the very principles, which, as it turns out, another and quite different body thought fit to state as some of their reasons of continued separation,* (p. 158;) the discovery that the appeal of the early Seceders to "the first free, faithful, and reforming Assembly," was an appeal to the Assembly 1638, (p. 157;) the cool assertion that the Act of 1833, which recognised the ministers of the Parliamentary Churches as parish ministers, was '*intended* to pave the way for the 'introduction of the ministers of Chapels of Ease into the Assembly,' though it is notorious that that act passed with the concurrence of a large proportion of the very parties who, in the year following, resisted the Chapel and the Veto Acts, and whom the Dean respects as the staunch opponents of innovation, (p. 164;) and what is certainly not the least astounding of his disclosures, the announcement that the authors of the Second Book of Discipline, 'proposed to exclude from 'the right of voting in the National Assembly, all but ecclesiastical 'persons, thereby destroying one of the most valuable parts of pres-'bytery, as ultimately established in Scotland, viz. the mixture of 'laymen in her Church Courts,' (p. 103,)—as if elders were not ecclesiastical persons, and as such expressly recognised in this very book;—these, and similar illustrations of his fairness, or his competency, I leave untouched; nor do I intend to follow him in the various subtleties by which he contrives, with what amount of honourable feeling I say not, to place in the worst and most invidious light, measures which were adopted, as he should have known, in good faith, for purposes the very contrary of those which he alleges; as when he discusses, after his own fashion, in petty detail, some of the more doubtful regulations of the law, whose great general principle he scarcely at all assails; (p. 195, &c.) or perverts every attempt of the Assembly's Committee to effect a comprehensive settlement of the question, into a manœuvre of technical and controversial warfare, such as he himself, it is plain, can better understand, (p. 131, &c.)

But there are some matters in regard to which I am anxious to remove misapprehension, and to explain and vindicate my views. And as a member of the Committee appointed by the late General Assembly, I am desirous of placing fairly before the Church and the public, the sentiments which that Committee have adopted in their negotiations with the parties to whom they have applied.

The Dean of Faculty professes in the first part of his pamphlet to expose the principles advocated by the supporters of the present measures of the Church, as fitted to excite alarm in regard to their ultimate

* See Appendix, p. 48.

designs. Some of these principles he represents as 'revived,' (p. 13,) others as 'resorted to,' (p. 11,) for the express purpose of defending 'the illegal usurpation' implied in the law against intrusion. The Church, it seems, or a section of it, being involved in unexpected difficulties, by grasping at undue power, found it necessary, as the controversy proceeded, to devise new principles, or to resuscitate old and obsolete ones, by means of which the position so rashly assumed, might be consistently maintained. Such is his theory. It has not occurred to him that he may possibly be guilty of the sophism which logicians call by a more learned name, but which common people recognise as putting the cart before the horse. We have been accustomed to regard it as an undoubted and notorious fact in the past history of our Church, that certain principles have all along been held and avowed by a certain body of men in her communion, which, if that body ever gained the ascendancy, must infallibly lead to the introduction of the popular element in the settlement of parishes, to a much greater extent, and in a much more definite way, than the policy of such leaders as Dr Robertson would sanction. We have always understood that the views of those who constituted the minority during the long reign of Moderation, were such as to compel them, if they should ever become the majority, to insist on some such distinct and explicit recognition of the people as the Act respecting Calls secures. When they contended against violent settlements, they held, as we imagined, that the Church was both entitled, as an Established Church, and bound, as a Church of Christ, to prevent the intrusion of Ministers contrary to the will of the congregation; and in the recent proceedings of the Church, we saw nothing more than what appeared to be the necessary result of the growing influence which these opinions, after a protracted struggle, began to have, on the deliberations and decisions of her Courts. Such was our simplicity. But the Dean of Faculty has got the true scent. He has unkennelled the fox. It is all a newfangled scheme, a sudden fit of clerical ambition and intolerance; and the principles now affected are mere blinds and covers, or, at the best, expedients and contrivances hit upon by a kind of after-thought, by which the real design of priestly domination may be plausibly promoted or disguised.

Thus, for instance, he is greatly offended by any thing approaching to the doctrine of divine right in matters ecclesiastical, a doctrine, which he says, 'has been the source in every age of the greatest in-'tolerance, and the constant pretext for ecclesiastical usurpation,' (p. 13.) He has three objections against this doctrine:—

1. There is a certain sensitive delicacy, a refined fastidiousness of spiritual taste, which shrinks from all apparent mixture of things sacred and secular, and recoils from the introduction of high spiritual views into common and ordinary affairs, as from a profanation both degrading and dangerous to religion. It is rare, however, to find such a degree of this feeling as the Dean of Faculty exhibits. He can hardly persuade himself even to allude to certain expressions of his opponents, which seem to connect the business of the settlement of

parishes with subjects, as he considers them, far too holy to be brought into contact with a matter so worldly.

'In the first place, the doctrine has been broached and revived, 'that 'the *rights of the Christian people*,' as '*members of the Church* "*of Christ*,' require either the abolition of patronage, or a right of 'absolute veto on the part of the people on the nomination of pre-'sentees. This is urged as a point of Christian doctrine. We are 'told of the 'standing which the Christian people have in the settle-"ment of their pastors,' as an *article of religious belief*, and as a *right* '(*somehow*) *connected with the privileges and blessings purchased and* '*procured for the members of the Church by our divine Redeemer*. It is 'difficult, in modern times, to convey in other words than those 'which are employed, (unwilling as one is to introduce expressions 'which cannot be commented upon without touching on subjects of 'the most sacred nature,) any correct notion of the extraordinary 'views on this subject brought forward by the highest Church authori-'ties who advocate the proposed changes. The *liberties*, the *privi-'leges*, the *immunities*, the *rights* of the *Christian* people, (for all these 'expressions are used indiscriminately) in regard to the settlement of 'ministers, are now talked of and treated as part of the rights 'of "the people in the Church of Christ;' as part of 'the privileges of "that liberty with which Christ has made his people free;' as *part* '*of the spiritual blessings and Christian privileges* which our Saviour has 'secured and promised to his Church, and as *connected with the hopes* '*and bound up with the promises of Redemption*.'

'Thus, Mr Candlish, in winding up his speech in support of Dr 'Chalmers's motion to disregard the judgment of the House of Lords, 'and after a variety of remarks maintaining the right of rejection to 'be among 'the privileges of that liberty with which Christ has made "his people free,' at last unequivocally explains the nature of the 'ground now taken on the part of the Presbyterian clergy, in the 'following sentence, (continuing the allusion to the banner already 'quoted) :—' The banner on which we find clearly and fully inscribed, "Cæsar's crown indeed, but along with it, and not less clearly or less "fully, CHRIST'S CROWN,—and underneath Christ's crown, and shielded "by it, the *purchased liberties of his redeemed people*," (p. 13–14.)

Now, I confess I cannot understand this extreme sanctity. If we had been putting on the same level, in respect of essential import-ance, 'the liberties of the Christian people in regard to the settle-'ment of ministers,' and 'the hopes and promises of redemption,' our ideas might justly have been characterised as carnal. We would have been taking a very low and degrading view of the grand design of the Saviour's purchase. But we never dreamt of identify-ing any privileges, having respect to the ordering of Christ's Church on earth, with the heavenly blessings of grace and salvation. We do not say that 'Christ died to procure for his people the right of 'being consulted in the forming of the pastoral tie.' He died to pro-cure for them eternal life. But other things were procured for his people by His death, besides that which it was its ultimate end to

obtain. And among these other things is that standing as members of His visible Church, which entitles them to a voice in its affairs. There is no profanation in this view, no degradation of a subject too sacred and too awful. On the contrary, if it be held that Christ has purchased for his people, not only grace, but the means and ministers of grace, it cannot at all events be deemed very inconsistent with the reverence due to holy mysteries, to hold, that He has purchased for them also some right and liberty of judgment in regard to the ordering of these means and ministers; and thus, without any approach to the impiety of confounding and mixing up the real spiritual benefits of the Saviour's glorious redemption, with the details of certain ecclesiastical arrangements of a more temporal and earthly character, we may still believe and maintain that these very arrangements fall within the scope of that redemption, and form a proper, though not the primary part of its design.*

2. But the Dean objects to this doctrine of divine right, on another ground;—not only because it introduces too sacred an element into a matter too secular, but also because, as he alleges, it necessarily leads to extreme anti-patronage opinions. Thus he says, (p. 14,) 'That these views point merely to the exercise of a veto (a thing 'wholly new) cannot be pretended. If they have any meaning, 'they decidedly strike against patronage, and lead to the 'divine "right of the people' to elect their ministers.' And again, (p. 15,) 'Indeed, it seems to be absurd to limit the views, which are 'maintained in this speech of Mr Candlish, and which pervade all the 'speeches on the subject in the last and recent Assemblies, to a claim 'for a veto on the part of the people. Such a thing as a veto is a 'mere novelty. Election of the ministers is *the* claim which has 'always been advocated on the same terms and on the same grounds 'of divine right.' In short, 'the doctrine necessarily leads now, as 'of old, to the support of the divine right of popular election,' (p. 16.)

I do not consider it necessary to advert to the frequent and reiterated insinuations with which the pamphlet abounds, relative to the

* There is a note here, (p. 14,) which would scarcely require notice, were it not that it furnishes a specimen of that art of controversy which consists in adroitly shifting the question unawares, so as to steal a march upon the enemy. The Confession of Faith is appealed to. The 20th chapter is quoted, as discountenancing the views of Christian liberty now asserted. This should mean, if it is to the point in hand, that the Confession discountenances "the talking of or treating the immunities of the Christian people, in regard to the settlement of ministers, as part of the privileges of that liberty with which Christ has made his people free." The Confession then, if it is to answer the appeal made to it, should be found teaching that Christian liberty consists exclusively in the enjoyment of the great blessings involved in a man's own personal salvation, and not at all, or in any part of it, in the exercise of any functions, or any rights, connected with such matters as the appointment of pastors to the whole body. But does the Confession teach this? No such thing. Even as quoted in the note, it simply teaches that Christian liberty does not warrant resistance to lawful power. Now this may be an important qualifying clause in this very controversy, and at another stage of the argument, it may be relevant. But it is not to the purpose here; and the reference to it in this particular place, shows either great confusion of ideas, or a singular want of that scrupulous accuracy in citing authorities for his opinions, which a fair disputant should conscientiously observe.

motives of the parties engaged in the present struggle: as if, in defending the present position of the Church, we could not possibly be acting in good faith, but must have some indirect views, and must be giving an insincere support to measures of which we do not approve, in the hope of being able to turn them to account, in prosecuting our ulterior designs. Such insinuations are easily made, and are not very worthy of the individual who makes them. In the present instance, there is little discrimination manifested in the assertion that, if divine right, or in other words, the authority of Scripture, is pleaded in this controversy at all, it must necessarily be in support of popular election. We say, on the contrary, that there are various principles applicable to the settlement of ministers, each of which may be referred, separately and independently, to the decision of the Word of God. I shall take this opportunity of enumerating some of these.

(1.) One principle then, is, that the pastoral relation cannot be duly formed without the consent of both the parties between whom it is formed: that consent being either formally expressed on both sides; or tacitly assumed, when dissent is allowed. In support of this principle an appeal may be made to Scripture; and it may be defended without involving any other doctrine, on grounds proper and peculiar to itself. The very nature of the pastoral relation, as it is described in the New Testament, implying so much of mutual confidence and esteem; the permanence also, as well as the intimacy of the connection thus formed;* the end for which the pastoral office was instituted, being not the private advantage of an individual, but the edification of the body of Christ; the standing assigned to all professed believers, indiscriminately, in reference to the trial of the spirits, and the responsibility devolved upon them; the example of the apostles, who, at the very least, consulted the general body of the faithful, in the appointment of those who were to bear rule; these, and similar arguments drawn from the Word of God, seem to warrant the conclusion, that consent, either expressed, or inferred from the absence of dissent, is essential to the right adjustment of this tie, and that it is therefore the sacred privilege of every Christian congregation to have no minister intruded upon them, whom they are not willing to receive.

(2.) Another principle applicable to this question, is, that the admission of ministers into particular charges, is ultimately a matter exclusively within the province of the office-bearers of the Church; and that in the exercise of this jurisdiction they can take instructions from no other party, neither from the people under them, nor from the civil powers, to which in all civil matters they owe subjection.

* The Dean affects to believe that the same regard to the will of the people, which leads to their being consulted when a minister is settled, involves a right on their part to insist on his being at any time discharged when they choose, (p. 260, &c.) It was never maintained, so far as I know, that the patron's right of choice involved a right of dismissal. The spirit which could prompt the Dean to write this passage, I will not characterise, for I can scarcely profess that I comprehend it.

This principle also may be supported as of Divine right; that is, as one sanctioned by the Word of God. As it belongs to the rulers in the Church, "to ordain presbyters in every city," so it is their right and duty, in the last resort, to determine if a particular minister shall be set over a particular flock. They are the sole judges of qualification. They are entitled to exercise their discretion in deciding on the general fitness and expediency of every settlement. And they cannot surrender this power, either to patrons on the one hand, or to parishioners on the other. Their being "bound and astricted to admit the qualified presentees of patrons," cannot, as we interpret the obligation, be held to limit their jurisdiction in the matter of the admission itself. It binds them to deal with the patron's presentee, as they would deal with any other individual, fairly and competently nominated under any other system. But it does not give the patron's presentee any peculiar privilege, in regard to the way in which the Church Courts are to deal with the question of his settlement; nor does it prevent them from doing in his case, what they are called to do in the case of every candidate, however presented to them—from judging and determining whether or not his settlement shall proceed. The same prerogative must continue with them, even when the people are consulted. Those whose office it is to ordain, must have an authority in the last resort, above and beyond all other parties. In whatever way a candidate may be brought before them, and to whatever extent all other obstacles may be removed, they are still intrusted with the duty of ascertaining, to their own entire satisfaction, the sufficiency of his qualifications and the propriety of his induction.

This principle is partly admitted and partly denied by the Dean. It is admitted and insisted on when he wishes to chime in with Dr Muir in representing the Veto law as an abdication, on the part of the Church Courts, of their legitimate authority, and a surrender of it into the hands of the people, (p. 174, &c.) It is denied when he considers the question, not as one between the rulers in the Church and the people, but as one between the Church and the State, or the State's patrons, (p. 137.) I am quite aware that in one passage, (p. 185,) he makes the Presbytery's right to judge of qualifications very wide and comprehensive. He refers to the famous case of Little Dunkeld, in which ignorance of Gaelic was held to be a disqualification for a Highland parish; and he even goes so far as to correct Dr Muir, who has claimed for the Church a right to judge of something more than mere qualifications, in the common technical sense of that term. Dr Muir would wish the Ecclesiastical Courts to do something more,—to determine generally the question of the expediency of each particular settlement; and he instances the case of a parish where Popery prevails, where the Presbytery might be called upon to reject a presentee, not because he is destitute of the requisite qualifications for the office of the ministry, but because that parish requires a different kind of man,—a man specially skilled in the Popish controversy, and able to deal wisely, as well as learnedly, with adversaries. The Dean labours hard to bring this under the category of qualifications,

for he wishes to reconcile Dr Muir's view with the judicial opinions of the Lord Chancellor and Lord Brougham, both of whom very expressly limit the Presbytery's jurisdiction in this case to a right to judge of qualifications, and both of whom also seem to restrict the inquiry respecting qualifications to the simple points of life, literature, and doctrine. Dr Muir's instance is a happy one, and the Dean scarcely succeeds in disposing of it so as to obviate the conclusion that something more than qualifications, in the legal import of the phrase, must be under the cognizance of the Church. But, at all events, his anxiety to put this colour on this exercise of jurisdiction, proves that he is not prepared to admit any paramount and discretionary right on the part of the Church, to determine fully and finally on the propriety of every settlement. And on many other occasions, he shows the same jealousy of the interference of the Church Courts, when he wishes to create a panic on the subject of ecclesiastical encroachments, and to present his opponents in the invidious light of persons aiming merely at personal or official aggrandizement. The consistency of his views on this subject, and their harmony with those of Dr Muir, I do not pretend to vindicate. But I cannot help drawing this inference, that the great principle now stated, regarding the power of church rulers in ordaining and admitting ministers, which holy Scripture seems to sanction, and on which the judgment of the Civil Courts materially infringes, is one which the Dean of Faculty very imperfectly comprehends. At all events, he is most cautious and guarded in conceding this power to the Church. For even when his object is to show how extensive the jurisdiction of Church Courts is, in the trial of ministerial qualifications, he is careful to introduce the saving clause, that 'the Church must not go beyond its proper com-'petency,' (p. 41.) Of this, I presume, he would make Civil Courts the judges, by whom therefore ultimately this power of the Church must be regulated.

(3.) A third principle applicable to the question of the settlement of ministers, is believed by many to be of scriptural authority. It is this: that the right of nomination ought to be within the Church,—that it ought not to be vested in any parties beyond the pale of its communion. This principle is founded on the consideration that the first nomination of a candidate, as well as every subsequent step in his settlement, should be regarded as a spiritual act,—an ecclesiastical privilege and function. It is merely a negative principle, not determining where the right of nomination should be vested, but only where it should not. It strikes, however, at the existence of the present law of patronage, which allows the right to be exercised by patrons not in communion with the Church. That law, therefore, is on this single ground held by not a few to be unscriptural.

(4.) Advancing one step farther, some persons find another Scriptural principle on this subject. The Word of God, as they interpret it, requires that it should be left altogether to the Church to say where the right of nomination should be vested. Admitting that the question regarding the best mode of nomination is one of difficulty,

they believe it be one which it belongs to the Church alone to settle. The interference either of a private party or of the State, as dictating in this matter, is viewed by them as an undue encroachment on the ecclesiastical province.

(5.) Finally, it may be maintained as a principle of Divine right, that the nomination must lie with the general body of members; just as it may, on the other hand, be maintained that it lies with the office-bearers of the particular congregation, or with those of the collective Presbytery. Such may be the judgment of those who discover in the Word of God elements for the determination of this question, not merely negatively but positively; who, therefore, may allege Divine authority as specially regulating the very first movement in a matter which so nearly concerns the Divine glory.

I enumerate these several principles, not for the purpose of discussing them, or of adducing Scriptural arguments in regard to them, but for the purpose of exposing the extreme ignorance and rashness of the assertion, that 'the doctrine of Divine right must necessarily 'lead to popular election.' It is plain that each of these principles may be defended separately and on its own merits, and any one of them, apart from all the rest, may be held to be of Scriptural authority. There is no occasion, therefore, for sounding so loud an alarm, and frightening quiet men from their propriety. The principle of non-intrusion, the first of those mentioned, stands on a footing sufficiently distinct and intelligible to admit of its being fairly considered as a principle complete in itself. I have been desirous also of pointing out some of the various elements which enter into the question of the settlement of ministers,—a question, not simple, as some suppose, and, therefore, easily disposed of by a single showy argument, or smart remark, but complicated, requiring a consideration of many different claims and relations, and admitting of an appeal to reason and to Scripture, on many different points of practical importance.

Before leaving this subject, I must observe that, until the recent decision of the Civil Courts, the first two principles which I have named, were all along regarded as quite compatible with the law of patronage. The Church was understood to have the power of giving effect to these principles, in the settlement of parishes, even under that law. It was on this understanding that the large body of men who, for a long time formed the minority in her Courts, continued in her communion; and the very object of their struggle against the policy of the majority was, to make the Church exert the power which she was held to possess, for giving effect to the principles in question. All parties, indeed, seemed to entertain this view of the Church's jurisdiction. For, on several occasions, as in 1734, 1736, 1740, 1752, 1768, the Church Courts did actually reject presentees on the ground of a want of consent on the part of the people,* and on the ground also of the general inexpediency of their admission; and their sentences were never disputed. And, in every instance, they exercised their discretion in sustaining the call, and in coming to a specific resolution, after all

* See Non-Intrusion Tracts, No. I.

the presentee's trials were sustained, to proceed to his induction. The judgment in the Auchterarder Case is the first intimation that the law of patronage is to be interpreted more strictly, so as to prevent the Church from giving effect to these principles, as it was always believed that she might do, if she chose, by an exercise of her own jurisdiction. This is an entirely new view of her constitution, which altogether alters the terms of her alliance with the State.* In this view she cannot acquiesce, for she holds it to be indispensable to her character as a Church of Christ, that she should have power to carry out these sacred principles. She did not understand that the State, in re-enacting patronage, meant to make it a condition of her establishment that she should surrender this power. She does not understand this even now. And although she freely admits that other Courts may, for their own purposes, adopt this understanding of the matter, she cannot act upon it herself. Nor will she conclude that this is the understanding on which the State, the only party with which she is in alliance, intends to insist, until the State shall expressly say so. In the meantime, she does not, she cannot, secede or separate from the State. She lays before the State her principles and views. She seeks a readjustment of the alliance, in regard to the terms of which a misunderstanding has arisen. And she awaits the issue of the negotiation.

This is the real position of the Church. These two are the only prin-

* "But, in trying to ascertain the full extent of the law involved in a cause, it is often as necessary to look to the opinions as to the decisions of the Court. Now, I do not think that the opinions delivered by the majority of this Court, or by the two learned lords who spoke on the appeal, admit of having less extracted from them than this, viz., that there are only two matters in the admission so purely spiritual as to be beyond the control of the Civil Court. These are the *ordination*, and the decision of the presentee's *qualifications*: and that, under the word qualification, nothing is comprehended except orthodoxy, learning, and morality; and, in particular, that the presentee's being or not being called with due popularity,—his being or not being adapted to the particular parish, and, above all, his being or not being intruded contrary to the will of the people, are all matters which form no relevant subjects of consideration, in so far as his exclusion, on the ground of his not being qualified for the particular cure, is concerned. The doctrine seems to me to be, that except on the two points of trying and of ordaining, the Presbytery acts so little spiritually, that it acts subject to civil control. In short, that the claim of the Church indirectly to control the patron, by proceeding on tests of popular consent, in order to enforce the principle of non-intrusion, is without foundation in law; and that the Church, though free, like any other inferior Civil Court, to give its opinions in the first instance, is ultimately, like these Courts, an instrument in the hands of the civil tribunal.

"This certainly leaves few traces of what I have hitherto been always accustomed to think the Church of Scotland. I am far from saying that it extinguishes, or even changes, that constitution; because I can admit the Church to have no constitution but what the law, as delivered by the Courts, gives it. But it so essentially changes what I have till now believed to be its constitution, that I cannot wonder at a Presbytery committing the mistake of walking by the old light. Indeed, every particular part of this doctrine will probably require to be fixed by positive decision, before it will be generally received as law. But, for my own part, considering how deliberately these opinions were formed, and how decidedly they are expressed, I cannot hesitate to receive them, when combined with the judgment, as at least conclusive of the Church's jurisdiction over all such questions."—Lord Cockburn's opinion on the Lethendy Case, p 83.

ciples fairly involved in the present question. These are the only principles, indeed, on which the present question between the Church and the State could be raised. Any of the other principles which may be entertained respecting patronage might have brought us into treaty with the State, and they may, at a subsequent period, bring us into such a treaty, but it must be in another form and in another attitude. We may renew our representations in regard to the grievance of patronage in itself. But this is not our present object;—this never could have brought us into our present difficulty. That difficulty arises solely from a new and unexpected interpretation having been put on the law of patronage, which seems to alter entirely the arrangement in respect of the nomination of ministers, in which the Church had acquiesced. The single question now before the Legislature and the public is—Shall the Church have liberty to give effect to these two principles,—the principle that consent on the part of the congregation is necessary to the pastoral relation being formed, and the principle that the matter of induction, comprehending the right of judging of the expediency of a settlement, lies exclusively in the Church? This is a distinct question,—quite separate from all other questions regarding the right mode of appointing ministers. It may serve to create confusion and excite alarm to represent these questions as identical. But it is an unfair representation, more consistent with the skill of a mere legal disputant, than the candour of an intelligent or an honourable opponent.

I mention these two principles together, because they seem to me to be inseparable; and because the judgment in the Auchterarder Case strikes at both. But for the interpretation of the law given by the Supreme Civil Courts in that Case, it might have been supposed possible for the Church to give effect to the one principle, by asserting and acting upon the other. Thus, if the Church Courts were allowed to have a discretionary right of judging, on any grounds of expediency, whether or not a settlement should proceed, they might, in the exercise of that right, prevent intrusion. This is the view stated by Dr Chalmers in a passage which the Dean of Faculty very grossly perverts, (pp. 178, 179.) Dr Chalmers was of opinion that the sentence of the Court of Session, while it set aside the formal veto, left Presbyteries still at liberty to reject unacceptable presentees in the exercise of their own proper jurisdiction, as judges of the propriety of every settlement. This did not imply, as the Dean asserts, any concession of the principle of non-intrusion. On the contrary, it went on the supposition that that principle was to be defended and maintained. But the judicial interpretation of the law of patronage, adopted in the Court of Appeal, is really, as Dr Chalmers ultimately saw, as much at variance with the Presbytery's right to exercise discretion as with the people's right to offer dissents.

I have dwelt on this part of the subject, because great and unfair use has been made in this controversy, of the sentiments which some of the advocates for the present measures of the Church are known to entertain, on the general question of patronage. Anti-patronage

men do not support the law against intrusion, merely as an instalment, or as a stepping-stone, (p. 133,) which may lead to something more. On the contrary, many of them are thoroughly convinced that the settlement of the present plan of modified patronage will materially diminish and indefinitely postpone the prospect of its total abolition. In this opinion they concur with Lord Moncrieff and others of those who originally proposed the plan. But they support the Church in the position which she has taken, simply because they regard that position as right in itself. And they appeal to Scriptural authority, to Divine right, in defence of the principles now at stake, just as they would desire to appeal to the same authority on behalf of all the principles which they may have occasion at any time to assert.

3. There is, however, still another objection urged by the Dean against the introduction of the authority of Scripture, or of Divine right, into the discussion of such ecclesiastical matters as that now before us. It leads, it seems, to intolerance. For 'the real and 'lasting mischief, arising from this claim of Divine origin, for any 'particular arrangements of Church polity, lies in the spirit of intoler-'ance, which such exaggeration necessarily generates,' (p. 15.) Again, 'the determination of questions of Church polity by reference to the 'immunities and rights which the blood of Christ has purchased for 'his people, and by appeals to the articles of faith essential to salva-'tion, of course stamps each opinion, in the eyes of its sincere or un-'thinking professors, with the sanctity and the authority of Divine 'truth. And still more, the assertion and claim of rights for the 'members of the Church, on the ground that such rights have been 'bestowed upon them by our Saviour, as part of the benefits of his 'atonement, tends to make them regard, as invasions of Christian 'privileges, any ecclesiastical arrangements which deny to them these 'rights. Any such schemes or arrangements of Church polity are 'viewed as inconsistent with the principles of Christian faith, and, of 'course, utterly unfit to accomplish the purposes of a religious es-'tablishment, because repugnant to the doctrines on which alone any 'such establishment can be founded. Hence, any other scheme is 'viewed with abhorrence which leads at once to intolerance,' (p. 18.)

This is a somewhat startling argument as used by a religious man. Toleration, it would appear, depends upon our shutting out the Word of God from the decision of any controverted point. Introduce the element of Divine right, and men instantly become intolerant. We are familiar with this reasoning as a favourite and somewhat hackneyed topic of Infidels and Latitudinarians. It is one of their common-places. They boast that, on the principles of scepticism, they can afford to be far more tolerant and liberal in their sentiments than those who claim Divine authority for all their peculiar opinions. Such a claim must, as they allege, lead to narrow-minded and exclusive bigotry. The Dean of Faculty most assuredly repudiates such logic as applied to the essential truths of religion. He holds these truths as of Divine right, and yet he is not on that

account intolerant. Why, then, should he suppose that, in the case of other truths, this claim of Divine right should necessarily imply that odious vice?

The grand illustration of this intolerance, arising out of a claim of Divine authority, is found in the sentiments which have been expressed in reference to Episcopacy, (p. 19.) And here the portentous phantom of our late Commemoration meeting rises before the terrified imagination, and the echo of its thunder against the English Church again vexes the ear. I had begun to think that this ghost had been laid; and that after Dr Bryce's exploit in the Commission, we should have no more displays of gallantry, in this beating of the air. But the Dean of Faculty seems inclined to play Sancho to Dr Bryce's Don Quixotte. At all events, he will break a lance against this windmill.

Seriously, I am sorry, that in so respectable a quarter, this idle clamour about hostility to the Church of England should be revived. I could regard, with great indifference, the misrepresentations of such pamphleteers in the Sister Church as Mr Marshall, and such practised debaters in our own Church as Dr Bryce, being confident that if the speech in question were but candidly read, no reasonable Episcopalian could be offended by its tone, while none could find any thing in it that ministered to the pride or bitterness of the most bigoted Presbyterian. But when the Dean of Faculty adopts the accusation, and does so for the purpose of creating a prejudice against the present proceedings of the Church, I owe it to myself and to the cause to take some brief notice of what he says.*

I have a profound respect for the Church of England, as one of the Churches of the Reformation. I admire and venerate the learning of her divines. I feel a lively interest in the growing spirituality and devotedness of her faithful pastors. I sympathize with her in her present difficulties, assailed as she is from without by the combined forces of infidelity, Popery, and political dissent, and threatened with the far more fatal plague of an internal apostasy from the pure truth of the Gospel. I heartily rejoice in every opportunity of co-operating with the Godly men in that communion, in all plans of evangelical philanthropy, and in the noble stand which they make in defence of all that is venerable and lovely in the faith once delivered to the saints.

* The Dean quotes an expression in the outset of my speech, 'I have a quarrel 'with Episcopacy altogether;' and he adds, 'and in support of that quarrel, doubt- 'less, he (Mr C.) went as far as I presume any one, at the struggle for the abolition of 'Episcopacy could well go,' (p. 19.) Every one who heard, or who reads the whole discussion, knows well enough what I meant. The motion which I seconded, spoke both of the way in which Episcopacy was introduced into Scotland, and of the demerits of Episcopacy in itself. My friend, Mr M'Crie, who preceded me, had dwelt chiefly on the first of these topics. In taking up his line of remark, I very naturally said, that my business was not merely to expose the aggravating circumstances which attended the introduction of Episcopacy into Scotland. I had a quarrel, not merely with Episcopacy as then arbitrarily enforced and Popishly garnished, but with Episcopacy altogether. It would have been quite unnecessary to give this explanation, were it not to show how unfairly our opponents can garble our sentences. I should have thought the Dean of Faculty greatly above so poor an artifice, so miserable a practice of debate.

And in entire consistency with these more than friendly sentiments, I hold the Divine right of Presbytery, and I believe that the system of Episcopacy is unscriptural, while the line of argument by which it is defended seems to me to lead naturally to the establishment of the authority of a Pope, (p. 19.) I am aware that some of those who have avowed their conviction, that "the Presbyterian form is founded on the Word of God, and agreeable thereto," understand this as meaning nothing more than that the Word of God is as much in favour of Presbyterianism as of any other model,—perhaps on the whole rather more so. They consider that the Scripture says nothing very definite on the subject, and furnishes no means of ascertaining very positively what kind of government the Great Head of the Church intended to institute. They say, therefore, of Presbytery, as they would almost equally say of Episcopacy, or of Independency, that "it is founded on the Word of God, and agreeable thereto," because they think that the Word of God affords room for very considerable latitude, and that the hints and directions which it contains are so general as to admit of several different schemes being viewed as almost equally in accordance with the Divine will. I do not quarrel with this explanation of our ordination formula, in those who conscientiously adopt it. But for myself, I take it somewhat more strictly. According to my view of it, it implies, that the Word of God has laid a foundation for a certain form of government in the Church, and that Presbytery is exclusively that form. I believe that the New Testament does contain sufficient elements for a determination of the question,—what is the mind of God in this matter: that it was not the design of our Lord and his apostles to leave it altogether loose: that there is enough to guide one who can use his reason in interpreting Scripture, to a knowledge of what they meant to establish and to sanction. Entertaining these opinions, I cannot regard the distinction between different forms of church government as one of little importance. I love the Church of England, but I condemn her episcopacy.

Let me try to enlighten the Dean of Faculty on this dark mystery of toleration. It is quite true that the introduction of the element of Divine authority in support of any religious truth, or any ecclesiastical arrangement, necessarily involves uncompromising hostility to whatever is opposed to it. But there are two antagonist principles which prevent that hostility from becoming intolerance. The one is the principle which leads enlightened Christians to make a distinction between the merits of an opinion or system, and those of the individuals who hold it. The other lies in the distinction made between truths held to be essential and those admitted to be of less vital importance. The first principle allows us to recognise as Christians, many individual members of a Church which we denounce as itself anti-Christian. The second admits of our recognising Churches as Christian, even although in some features of their constitution we regard them as anti-Scriptural. These principles of toleration and liberality, which are distinct from the general obligation of Christian charity

towards the persons of such as differ from us, and which are directly opposed to the spurious latitudinarian charity of indulgence towards their errors,—maintain, amid all its schisms, the unity of the body of Christ. According to the first principle, Protestants who hold the Church of Rome to be Babylon, may cherish the hope that not a few in its communion are their brethren in Christ: and Puseyites who hold the Church of Scotland to be no Church at all, and who call her Samaria, may admit that some Presbyterians may be saved. According to the second principle, we who view Episcopacy as an anti-Scriptural error, yet satisfied that it may not be an error in essentials, cordially embrace the Church of England, as a true Church of the living God, having a sound faith, and a Scriptural administration of Sacraments.

I have not time to illustrate these principles. But I think that they deserve the consideration of those who may be carried away by the outcry about intolerance, and especially by the elaborate parallel drawn (p. 23) between the views held by some of us in regard to the divine authority of the Presbyterial form of government, and the doctrines of the Oxford divines in regard to apostolical succession. It should have been known that there is the widest difference of opinion between us and them as to the real nature and essential conditions of a Christian Church, and that this difference makes the attempt to confound our sentiments altogether unreasonable and unfair. It is not their appeal to Scriptural authority on behalf of their doctrine, but it is the doctrine itself, which compels them to exclude from the pale of the Christian Church all Presbyterian communities.*

The Dean of Faculty is himself a Presbyterian: and the best part by far of his letter is the statement which he gives of his reasons for preferring that polity. (p. 12.) It is somewhat strange, however, that the man who in one place, in addition to other commendations, strongly avows his 'persuasion, that the discipline and government 'of the Church of Scotland are on the whole better fitted than Episcopacy to guard the purity of communion, and to enforce constant 'attention to duty on the part of the ministers of the Church,' (p. 12,) should, so very shortly after, take me to task for 'declaring that 'the Presbyterian form is best fitted 'to *secure* and *improve* the "outpouring of the Spirit of God,' and expressing my belief 'that the "revival of sound doctrines, and spiritual and evangelical religion in "England, will lead in that country, as a necessary fruit of genuine "faith,' 'if not to Presbyterianism, at least to as good a substitute for "it as the laws of Episcopacy will permit," (p. 19.) In the same spirit he quotes my words, 'If this work of revival goes on, they (the 'clergy of England) *must* unite together in *demanding* that their voice 'shall be fully heard, not merely in the way of humble petitions, but 'in the way of free and equal discussion and debate in some assem'blies, sitting under the presidentship, it may be, of their bishop or 'archbishop, yet with freedom to state their own views, and to con'sult together on the glory of God and the good of souls. I heartily 'wish, Sir, that such a time may arrive, and whether they call it

* See Note, p. 39.

'Presbyterianism or not, I shall rejoice to see such efficient instru-
'ments of a new life put into the hands of the ministers of the sister
'land;' and then he follows up the quotation with this sarcastic com-
mentary,—'as if the great and main objects by which the glory of
'God and the eternal welfare of man will be promoted, could not be
'prosecuted effectually, and with the full benefit and efficacy of di-
'vine blessing, unless you have in England the contentions and
'parties of popular assemblies in your Church.' I see nothing very extravagant in my wish, nothing very unfriendly, nothing very intolerant. I believe many of my brethren in the Church of England will agree with me in thinking, that a little of the spirit of the Simeons and the Venns, might with advantage be infused into her Episcopal counsels; and that both in regard to the influence of the working clergy, and in regard to the institution of the eldership, useful practical hints might be taken from the ecclesiastical polity and the parochial economy of our humble Scottish Establishment.

But let me do the Dean of Faculty justice. His panic on the subject of our high claim of divine right, is greatly aggravated by his ignorance of what can possibly be meant by a single ominous expression that occurs in my speech at the Commemoration meeting. 'As
'such views of the divine prescription of any one form of church go-
'vernment, always lead to the most exalted claims for the power of
'that Church, which is held to be prescribed and set forth in Scrip-
'ture for the Church on earth, Mr Candlish deplored the very im-
'perfect, and inadequate, and feeble establishment of Presbytery in
'Scotland at the time of the Revolution, as but a mutilated and de-
'fective image of the more vigorous and Scriptural system which had
'been put forth in Bible purity, and freshness, and efficiency, in 1638.
'He claimed for the Church of Scotland even now the constitution or
'schemes of 1638, "which never had altogether fair play."' (p. 19.) This phrase is repeatedly quoted by the Dean as one of very alarming import; and in one place he gives the whole passage at length, and adds a luminous exposition. I must be allowed to offer a few remarks on the commentary, while I subjoin the text itself, as the Dean quotes it, in a note.*

* 'The passage I allude to is as follows:—'And we have reason to be thankful
"that, since 1638, that constitution has been preserved. It is true that never since
"the period of 1638—never, I may say, has that constitution had altogether fair
"play. For a brief period after the rising of that Assembly, the Church enjoyed
"prosperity, and, it may be, in part abused it. It is possible that success, sudden
"success, after long trial, may have led to some excesses; which men, with no soul
"for entering into the noble spirit breathing through these times and transactions,
"may point out in their petty cavils, and try to hold up to scorn, while they might
"rather cast a veil over such minor blemishes, and thank God for the great work
"done. After this period of prosperity came a period of persecution—godliness was
"wellnigh suppressed in the Church by the arm of arbitrary power, and corruption
"in manners spread and increased by the example of royal and noble profligacy—
"the Sabbath was desecrated, and the inferior orders of the clergy had, in a great
"degree, lapsed into latitudinarian sentiments, and immoral conduct. At the period
"of the Revolution, it will *hardly be maintained now by any* that the *system of our Church,*
"as our *wise and pious forefathers framed it,* was *fully realized.* The settlement of that
"era, by *no means perfectly embodied the fair image* which *they had conceived.* A leaven of

In the first place he extracts out of this passage, a very sweeping admission. 'I am glad, at least, that he admits that Presbytery, as 'settled at the Revolution in 1690, (even with the change made *then* 'as to patronage,) *does not warrant the views and claims* which he now 'puts forth. This is an important practical admission to those who 'understand and hold Presbytery, as *then settled*, to be 'the Church of "Scotland,' and know no other form of it;—though Mr Candlish, as 'a minister of that Church, is not satisfied with the settlement of 1688. 'And I think it is also extremely important to notice the declaration, 'that, in attempting to fix or regulate that constitution, the State 'stretched forth its hand, in the management of spiritual matters, *be-'yond its legitimate province:* For such a declaration admits, that the 'State *did* fix and regulate the constitution of the Church, even in 'spiritual matters, and *did interpose* in a way which excludes much of 'what is now claimed.' (p. 118, 119.) I certainly never intended to make any such admission. I was not at the time speaking of the views and claims now put forth by the advocates of the present measures of the Church, and I did not say that the Revolution settlement was inconsistent with them, or did not warrant them. Moreover, I did not even say that it was specially in attempting to fix or regulate the constitution of the Church, 'that the State stretched forth its hand beyond 'its legitimate province;' but generally, 'in the management of spi-'ritual affairs.' I believe that in some of the ecclesiastical arrangements then made, as in those that regarded the law of patronage, the continuance of Episcopalian ministers in their charges, and perhaps a few other minor matters, the Church ought to have been more fully consulted. I believe that she was entitled to have some of the former acts, which had been annulled, more explicitly vindicated, those, for example, of the Assembly 1638. But it is a gratuitous perversion of my words to interpret them as conveying any censure of the Revolution settlement, in so far as it recognised and established the Presbyterian constitution of the Church; or to extract from them any admission that that settlement did not warrant the views and

"Episcopalian corruption, as affecting both the manners of the people, and the doc-"trine and conduct of the ministers, still remained, and the *State undoubtedly stretched "forth its hand*, in the management of spiritual affairs, *beyond its legitimate province*. "Then came the union of the crowns, the influence naturally exerted by intercourse "with our richer and more powerful neighbour, and the gradual alienation of many "of the upper classes, by their southern education, and transference of the parliament, "as well as the court, to London. I need not remind this meeting of the circum-"stances which have since hindered the full and fair play of the constitution of the "Church—the obstacles interposed by the arbitrary enactment of patronage, in the "reign of Queen Anne; and worst of all, by the secession of those men of old, who "had too good cause indeed for leaving a *tyrannical* Church, but who, had they fore-"seen these two things on the one hand, the extent to which their descendants "would go, in disowning this Church altogether; and, on the other hand, the revival "with which it has pleased God to bless our Church in these latter days,—would, I "earnestly believe, have borne more patiently their tribulations, and continued to "witness within our Church, rather than to witness against it. However that may "be, I mention this thing merely as showing *that the constitution of* 1638 *never had full "and fair play.*" (p. 117, 118.)

claims which we now assert in reference to the jurisdiction of the Church in the calling and induction of ministers.

Again, the Dean refers to certain proceedings of the Church, in the period subsequent to 1638, which were in entire accordance indeed with the spirit of an age little acquainted with the duty of toleration and the rights of conscience, but which he knows that the more enlightened Christianity of modern times must reprobate. And with extreme candour and fairness he supposes, that it must needs be with an eye to these proceedings, that I deplore, as he alleges I do, the imperfection of the Revolution settlement, and lament that the constitution of 1638, as then restored, had not fair play. 'The Assembly of 1638,—justified, no doubt, as every great move-'ment against oppression and practical despotism always is, by the 'exigency of the period, and by the necessity of breaking through the 'persecution and tyranny of which the nation complained in regard to 'religion, no matter by what means—claimed however and exercised '(be it remembered) the power of setting aside acts of Parliament, 'and of overturning institutions established by statute. Is that power '—used at a period of a great national struggle for religious freedom, 'against the encroachments of Popery, and against a most galling per-'secution—a part of the ecclesiastical constitution of which we received 'so faint and imperfect an image at the Revolution in 1688? The 'Assembly of 1638 assumed at once the complete control and domi-'nion over the press,—and by virtue of their *ecclesiastical* authority, '(so plastic is the term for the purposes of encroachment), prohibited 'all printers within the kingdom, to print any thing which might call 'in question their proceedings or opinions. The Covenant for the 'defence of Presbytery in Scotland was soon converted into a new 'covenant for the extirpation of Episcopacy in England. All per-'sons, *not in the ministry of the Church*, were prohibited from publicly 'explaining the Scriptures—a prohibition levelled against any dissent 'and all dissenters of every kind, whether Independents or not; and 'while it was admitted that, in a season of persecution, (when the 'Presbyterian clergy had themselves propagated their own views by 'private meetings), such things might be allowed, yet after a Church 'was regularly constituted, it was declared that the practice should 'be discontinued, as *prejudising the Established ministry*, and *destroy-'ing the unity of Christian congregations*:—And in order that family 'worship might not be the pretext for such, it was declared, that 'family worship should be limited to members of the same family. 'Many other illustrations might be given of the views and objects of 'the Church at this period, and of the nature of that system or scheme 'of a church, which, it was admitted by Mr Candlish, was *not* realized 'in many particulars at the Revolution 1688, and of those matters, 'the regulation of which the State at that period, by the interference 'complained of, did not allow to belong to the 'legitimate province' 'of the Church,' (p. 119, 121.)

Such is a specimen of the Dean of Faculty's honourable dealing with an adversary. I had expressly spoken, in the very passage

which he quotes, "of some excesses to which sudden success, after long trial, may have led our forefathers." And these excesses, it would seem, must be the very things, and the only things, in their scheme of policy, which I wish to see more fully revived and carried out, than they were at the Revolution. I had spoken also of 'men, 'with no soul for entering into the noble spirit breathing through these 'times and transactions, who point out these excesses, in their petty 'cavils, and try to hold them up to scorn, while they might rather cast 'a veil over such minor blemishes, and thank God for the great work 'done.' When I uttered these words, I had not the Dean of Faculty in my eye; for he had not then written the sentences which I have quoted. But I would tell him now, that while I agree with him in counting it a happy circumstance, that the Church, at the Revolution, was prevented from going into some of the views and plans into which the men of the second Reformation and the Covenants were hurried; there are other measures which their godly zeal and far-seeing sagacity devised, measures connected with the efficiency of the ministry, the extension of the Reformation, the purity of manners, and the cause of education, which it would have been well for our country if the Church and the State together, as settled at that happy era, had more cordially adopted, and more vigorously prosecuted.

In regard to the real meaning of my observation, I may safely allow the passage to speak for itself. I specially pointed out the kind of obstacles which seemed to have hindered our Presbyterian constitution from doing its full work, and conferring on our country all the blessings which, in its own proper nature, it is fitted to bestow. These, however, as I stated them, arose not so much out of any defects real or alleged in the Revolution settlement of the Church, as out of subsequent transactions and subsequent events in her history. Certainly at that period she met with no such obstruction as that which is now put in the way of her reviving efficiency and usefulness. For whatever we may think of the arrangement then made on the subject of patronage, we shall not easily be brought to allow, even though the Dean of Faculty would fain entrap us into such an admission, that the Church was divested of her power to determine in what circumstances the pastoral relation ought to be formed. And this is the power which we now claim on her behalf.

There are several points in the Dean of Faculty's Letter, on which I could have wished to offer some remarks. In particular, I might refer to the subject of the independent jurisdiction of the Church, and the position which she occupies in her connection with the State. She is not, as a Church, subject to the State. She is in alliance with it. When any question, therefore, arises in regard to what have been supposed to be the conditions of that alliance, it cannot be summarily disposed of by a mere act of authority on the part of the Civil Courts, and a charge of rebellion against the Courts of the Church, if they do not at once acquiesce. It is a question regarding a contract be-

tween equals, in the adjustment of which the Church must be recognised, not as a subject considering to what extent active obedience to the 'powers that be' must be carried, (though even in that view of her position she cannot be bound to unlimited and unreserved compliance,) but as a party to a contract, fairly interpreting its terms according to her best understanding of them, and entitled, in the event of a dispute arising, to confer with the other party on a footing of independence and equality. This is the substance of an argument in the Non-Intrusion Tracts, which the Dean of Faculty seems to be unable to comprehend, (pp. 82-85,)—to which, at least, he does not condescend to reply. We can say, when we are required to sanction the intrusion of a minister on a reclaiming congregation, 1. That, as subjects, we are not bound to do so, because our obligation to a higher power—to the Head of the Church—forbids it; and, 2. That, as parties to a contract with the State, we are not bound to do so, for we do not so understand the contract. The State, indeed, may insist upon our so understanding it, in which case it will remain for the Church to act as her conscientious views of duty may direct. But this case has not yet arisen. And, in the meantime, the Church is not rebellious; she is not guilty even of a breach of contract. It may ultimately be determined by the party with which the power to dissolve the contract lies, that the contract has been violated. But it is not so determined as yet; and the parties may still come to an agreement. And, though it may be difficult, and even impossible to remedy the evil which has already arisen from the question being raised, since the decisions of civil law and the dictates of spiritual duty may be alike unbending, still the question itself, which has been raised, may be settled so as to obviate all future misunderstanding, and to restore the harmony which has been broken. In all this reasoning there is nothing 'Jesuitical,' nothing sophistical, such as the Dean of Faculty would hold to be so alarming and so practically mischievous, (p. 83.) Nor is there, as he supposes, any analogy between the refusal of an individual to pay tribute, and the refusal of the Church to perform a spiritual act at the command of the Civil Court, although, for the purpose apparently of having a personal hit at his opponents, he chooses to represent these two things as identical, (p. 84.) Our persons and our property are absolutely at the disposal of the civil magistrate. Our standing, also, as an Establishment, is at the mercy of the State. But we do not, either as a Church of Christ or as an Established Church, owe to the State unlimited submission. We must obey God rather than man.

I could have wished also to give a fair view of the whole proceedings of the Church in regard to this question, and to show their entire consistency. Much of the effect of the Dean of Faculty's pamphlet depends on his elaborate attempt to represent these proceedings as a mere accumulation of the most arbitrary acts of tyranny and ambition; as if the Church had, as it were, run wild, and were venting her new and sudden madness in all varieties of wanton gambols and rude outbreakings of power, (p. 39, &c., and *passim*.)

A plain tale might put down all this highly coloured romance. The Church has really been prosecuting one single object,—which is, to maintain her jurisdiction as a free Church of Christ, intrusted with the care of the people's privileges, and entitled to require that, in the induction of every minister into a spiritual charge, she shall herself be fully satisfied.

But I leave these, and many other parts of our case to abler hands. Indeed, it would be an endless and most irksome task for any one man to meet in detail and to dispose of so much special pleading, relieved by so few general views. The pamphlet may give occasion to a considerable variety of exposures and expositions, on the side of the Church. From its own extremely desultory nature, it will scarcely admit of any one reply complete in itself.*

One subject, however, I must briefly notice. I refer to certain papers prepared by the Committee of the late General Assembly, for the purpose of bringing the case of the Church fairly and fully, but in short compass, before the view of the different parties with whom it was their duty to open up a negotiation. These papers consist of a Statement agreed to by the Committee, and a Supplementary Note, sanctioned by the members of the Deputation recently in London, and since then reported to the Committee, and approved of. They are, therefore, in so far, official documents, and though not intended to be published, they have been freely circulated in various influential quarters. They may be regarded as containing the manifesto of the Committee. In commenting on them, the Dean of Faculty has wholly overlooked their general scope and spirit, and, as usual, after his fashion of special pleading, he has fastened upon some minute points in them, which are susceptible of an unfavourable representation. The papers themselves are now given entire in the Appendix. I believe that a calm and candid perusal of them as a whole, will leave a very different impression on the mind from that which the Dean of Faculty's select extracts from them, while they were yet unpublished, were fitted to convey; and I could almost be content to leave them, without any vindication of mine, to answer for themselves. At the same time, it may be proper to obviate some of the prejudices and misapprehensions which might be taken up from his account of them,—an account more skilfully than candidly prepared; and it may be useful to explain the real views of the Committee.

It is not easy to reduce to exact order the Dean's long and somewhat rambling and incoherent discussion of the "Statement and

* I am happy to think that, in addition to Mr Dunlop's able argument on the subject of the Dean's legal pleadings, we may expect from Mr Cunningham, as soon as his leisure permits, a fuller and more elaborate exposure than the hurried preparation of a few days, in the first heat of such a controversy, with such an opponent, could admit of any one doing justice to. In particular, it is satisfactory to know that one so competent in all respects, has it in contemplation to undertake the task of giving a comprehensive view of the whole series of the Church's proceedings from the beginning of this movement in which she is now engaged.

Supplementary Note;" but I shall endeavour to collect some of his objections.

1. 'In the first place, the "Statement" of the Committee anxi-'ously explains that their object is to prevent any interference with, 'or definition or limitation of the authority of the Church.'* (p. 133.) This he gathers from a passage of the "Statement," in which the Committee specify the amount of the modification of the law of patronage, which they think should satisfy the Church, and point out the position which the Church would occupy, if that modification were granted. Now, if the Dean means that we desire such an arrangement as shall leave the legitimate authority of the Church unimpaired, he is right. If he says that we object to any definition of that authority, he is wrong. In the very passage which he quotes, we suggest the propriety of fixing "the utmost extent of the limitation which is to be imposed on the exercise of patronage." We thought it right, however, at the same time, to guard against misapprehension, by showing, that within the limit so fixed, the Church Judicatories would still retain all the authority to which they are entitled. For that authority might be compromised in two ways. The civil sanction might be given to this privilege of the people in such a form as to exempt them from the control of their ecclesiastical rulers in the exercise of it. For, whatever the Dean of Faculty may choose to allege, none of us have ever claimed for the people in the Church any right or privilege, which should be independent of the jurisdiction of the rulers. It belongs to the rulers to recognise the privilege of the people, and to regulate its exercise: and in this, as in all matters connected with their ecclesiastical standing, the people must be viewed as under their superintendence and discipline. The Dean may upon this raise a cry about ecclesiastical domination, and allege that we give up the doctrine of the people's right; for the notion of a balance of powers or of privileges seems to be beyond his comprehension. Nevertheless, while we desire that, under the modified law of patronage, the Church Courts should be held entitled to give effect to the voice of the people, to a certain specified extent, we think it most important that the jurisdiction of these Courts over the people should be preserved entire. Again, on the other hand, the authority of the Church may be compromised by a limitation of the right of judging of every candidate's qualifications, and of the suitableness and expediency of his settlement. The Committee were as anxious to maintain this part of the Church's jurisdiction, as Dr Muir, and those who adhered to his dissent, could possibly be; and as the judicial opinions in the Auchterarder Case seemed to cast some doubt upon it, it was thought desirable, that in any new enactment the matter should be set at rest. There will be occasion presently to return to this point; but in the meantime let us notice the next fault found with the "Statement."

2. 'In the second place, the Committee *do not wish the* VETO *law* '*established and fixed* as a permanent measure, or as any final settle-

* See the passage in the Appendix, under head III. of the Statement.

'ment of the question.' (p. 133.) No doubt they have expressly said in their "Statement" that they do wish this; but the Dean of Faculty knows better than to believe them, for he is a great adept in the art of suspecting and detecting secret designs. He is infallibly assured that one-half of us are dishonest, and that the other half are our tools, in this whole business. Our object is to plunge Church and State into a perfect chaos of anarchy, that our new world of Church tyranny and popular election may arise, in beautiful symmetry, out of the deep. For mark how he interprets the language of our Statement, as previously quoted by himself:—'Another 'very important principle on which the proposal of the Committee 'proceeds, is, that the *mode of giving effect to the will* of the people, 'and to the principle of non-intrusion, shall *not be set forth in any 'statute*, but *left to the authority of the Church Courts to be regulated 'and carried into effect in the way they think best*. The Committee does 'not wish that the Legislature, in altering the law to the extent of 'giving power to the Church to give effect to the principle of rejection, '*should fix or settle any thing*. The Committee do not propose that the 'Legislature should enact the Veto law of the Assembly, or indeed 'decide or establish any thing whatever. And, above all, the Committee do not wish that the Legislature should define or fix any thing 'as to the extent of the jurisdiction of the Church, but only that the 'power of the Church to give effect to the will of the people in the 'Church shall be considered and recognised; while the whole measures for the appointment of ministers which are to be framed on 'that principle, either now or at any future time, by the Church, shall 'be left wholly to the Church.' (p. 132.) Then follow (*more suo*) two notes of admiration; and he emphatically concludes, 'Such a plan 'will concede every thing, and fix nothing.' Most assuredly it will. But then this is the Dean of Faculty's own plan, not that of the Assembly's Committee. We never proposed that the mode of giving effect to the principle of non-intrusion should be left undefined. We said, indeed, that by giving its authority to the particular mode already resorted to by the Church, rather than resorting to any other, the State would appear to occupy its true and proper position in reference to the Church; not dictating, in ecclesiastical arrangements, to the Church, but receiving suggestions from the Church, and allowing, recognising and confirming, as to civil consequences, what the Church has already enacted and ordained. This is the just attitude of the State in establishing the Church. The Church presents to the State her creed and her constitution, which the State, on due consideration and approval, acknowledges by a civil sanction. So, in the present instance, the Committee recommend that the Church should present to the State the plan which she has herself adopted, and should ask the State to give to it civil force and effect. This they regard as a better course than the opening up of the question, by the State legislating anew on the subject. But this is not leaving the matter open: on the contrary, it fixes it as precisely as words can well do; and while it undoubtedly maintains entire the jurisdiction of the Church in

the settlement of ministers, it determines quite expressly in what manner that jurisdiction is to be exercised for the protection of the people's privileges, and the prevention of the wrong and evil of intrusion.

3. It is made matter of complaint, that 'the Committee take all 'points to be quite open,' and discuss different plans, such as the expediency of applying for a repeal of the Act of Queen Anne, and the propriety of requiring the consent of the people by a positive Call. (p. 134.) Nothing can well be more unmerited, I had almost said unfair, than this reflection. The Dean of Faculty ought to have read and understood the deliverance of the late General Assembly, before he began to criticise it. If he had, he would have seen that the General Assembly did not declare, as he says (p. 48) it did, that the Church must adhere to the Veto Act, *in its terms*. What the Assembly declared to be a fundamental part of the Church's constitution, not to be abandoned, was the " principle of non-intrusion,"—the principle " that no presentee shall be forced upon any parish, contrary to the will of the congregation." It was to reconcile the maintaining of this principle with the continuance of " the legal provision for the sustentation of the ministry in parishes where it is carried into effect," that the Committee was appointed. But any one may perceive that a repeal of the law of patronage, or a legal sanction given to the requisition of a positive Call, would be as effectual a mode of maintaining this principle, as the recognition of the existing statute of the Church. It was not, therefore, beyond the province of the Committee, in opening a negotiation with the parties interested in the adjustment of the question, to review the several methods by which the object of the General Assembly might be gained. In doing so, they naturally limited themselves to a consideration of the comparative expediency of these several methods, as means of attaining the end in view; and the result to which they came, pointing to a confirmation of the present system, shows their reluctance to unsettle what has been already fixed. At the same time, if any of these other measures, or if any measure different from them all, should be proposed, as a measure by which the evil of intrusion can be effectually prevented, the Church is not precluded from giving to it a fair consideration, although she has resolved to leave her present law unrepealed, until some equally satisfactory arrangement can be adopted. Such is the simple explanation of this part of the Committee's Statement, which the Dean of Faculty professes to regard as so mysteriously alarming. The invidious conclusions deduced by him from the Committee's reasonings, which he evidently so little comprehends, I do not consider it necessary to notice. He refers to a certain 'understanding on which the question of the 'abolition of patronage was waived in the late General Assembly.' (p. 136.) I can only say, that although I was one of those who would have supported the overture, if it had been brought in, I was not aware that the superseding of that discussion was in any way connected with the constitution or the instructions of the committee previously named, in reference to the subject of Non-intrusion.

If the Committee, in their "Statement," did not suggest the very terms of such an act of Parliament as might satisfy the Church, the deputation to London, in their "Supplementary Note," supply this omission. But there is no pleasing the Dean of Faculty. The bill suggested by the deputation, or in other words, by the Committee, for the Dean may be "assured," (p. 136,) that there is entire harmony on this point, is a very simple one. It consists of two clauses. The first is sufficiently explicit, even to satisfy our somewhat captious critic himself. It declares that the rejection of a presentee by the Church Courts, in respect of the dissent of the majority of those at present recognised as entitled to dissent, shall be a valid rejection in respect of all civil consequences. One of the civil consequences of a valid rejection is, that "all right and interest of the presentee, in the presentation granted to him shall cease." Another is, that "if the patron shall not, within the period competent to him by law, present another qualified person, the right of presentation shall, for that time, fall to the Presbytery, *jure devoluto*." It is proposed, accordingly, that both of these consequences should be expressly specified in the new enactment. The latter of them, however, the Dean represents as a great and unheard-of hardship to patrons; (p. 139,) and he enlarges on the iniquity of placing the patron, when the Presbytery reject his presentee on the special ground of the dissent, in the very same position in which he is placed, when they reject his presentee on any other ground whatever. No doubt a grievous case may be got up of a patron, in the fourth or fifth month of the vacancy, selecting one whom he reckons the very best man, and then, when he is unexpectedly rejected, having only the small remainder of the six months, in which he may make another experiment in the exercise of his right. But this is simply what must happen, by ordinary course of civil law, in every instance of a rejection by the Presbytery, under any statute of the Church whatsoever, when that rejection is held in law to be valid; and there is no reason for a special exception, in the particular instance of a rejection under the statute against intrusion. In regard to the work which the Dean of Faculty and others make (p. 42, 137, and *passim*,) about the Presbytery's desiring to obtain the patronage for themselves, and so getting up a dissent on purpose, the very same objection may be urged, with much greater force, against the Presbytery's right of trying qualifications. If the Presbytery have this object in view, they may attain it quite as well by finding the patron's presentee unqualified, as by finding him unacceptable; nay better and more easily, for in that case they have the game in their own hands. They do not need to make the people parties in the conspiracy. They have simply to conduct a skilful examination, by which the candidate may be disconcerted and confused; and every one who knows what an examination is, and how indefinite is the standard of qualification, must be aware, that there are very few candidates indeed, whom expert examiners might not find plausible reasons for rejecting. If Presbyteries are so ambitious and dishonest, I wonder much that the Dean of Faculty would trust

them with so much discretionary power in the trial of presentees. Indeed I am not sure that he is altogether disposed to trust them; at least I would not trust him. I would not guarantee the Church against an action in which he might be counsel, for reviewing, in the Civil Court, the sentence of a Presbytery finding a presentee unfit. I am sure he could easily devise a sufficient pretence for such an action. The very cautious and guarded manner in which he repeatedly speaks of the Presbytery's right of judgment in this matter, introducing always such saving clauses as 'not going beyond their proper competency,' (p. 41,) 'provided it be *a proper judgment* on the qualifications of the individual,' (p. 180,) and his extreme jealousy of every attempt to widen the limits of the Church's jurisdiction, may well lead us to fear, that though in one place, he introduces an elaborate pleading to explain away those parts of the judicial opinions in the House of Lords, which had alarmed Dr Chalmers on this very point, (p. 190, &c.,) he really himself goes farther than perhaps he is now aware of, in the way of agreeing with Lord Brougham, who very plainly intimated that even in regard to a judgment respecting qualifications, if that term were not understood in a strictly technical sense, a Church Court might be called to give account of its procedure, at the bar of a civil tribunal.

In fact, this is the Dean of Faculty's chief objection to the measure proposed in the "Supplementary Note." The second clause suggests "It should be provided also and enacted, That it shall always be understood to be in the power of the competent Church judicatories, to take, treat, and judge of the qualifications of the presentee, and his suitableness in all other respects for the charge to which he is presented." 'SUITABLE IN ALL OTHER respects, (in addition to qualifications,) for the charge to which he is presented,' exclaims the Dean of Faculty, (p. 137,) using large capitals in his quotation, which, as well as notes of admiration, is one of his favourite modes of exposing an unsound argument. This must manifestly mean to leave Church Courts at liberty to reject a presentee because he is not six feet high, or for any reason, or no reason, as their caprice may dictate. I ask the Dean what is the meaning of the clause in Dr Cook's resolution of 1833, which makes it competent for the Presbytery to consider and decide upon "objections of whatever nature against the presentee, or against the settlement taking place?" What is meant by the large expression "objections of whatever nature?" What by the alternative, "against the settlement taking place?" Is this in any respect a less comprehensive claim of jurisdiction for the Church, than that which we make? We say that a presentee must not only be acceptable to the people, and qualified for the ministry, but suitable in all other respects for the charge to which he is presented. In so far as this last provision is concerned, does Dr Cook say less? And if such a declaration of the power and prerogative of the Church, in the matter of the settlement of parishes, was necessary in 1833, is it less so now, when the sentiments judicially expressed in the Civil Courts, regarding the technical and legal import of qualifications for

the ministry, have, at the very least, cast so much doubt on the Church's jurisdiction, as to render it most desirable that in any legislative enactment that may be passed, it should be broadly and explicitly recognised?

The Dean of Faculty evidently cannot comprehend what we non-intrusionists would be at. We are a puzzle to him,—a mystery. He can see nothing about us but self-contradiction. But self-contradiction is not so harmless in us as it is in others, who thereby, for the most part, hurt nobody but themselves. In every variety of mood, we are dangerous. Now we are bent on swallowing up all powers and prerogatives, civil and sacred,—all rights and liberties, spiritual and temporal, in one dark gulph of ecclesiastical domination. Again we are surrendering all Church supremacy into the hands of the lowest of the people, and encouraging the most turbulent democracy, in the strange hope of being able to wield that unruly element as our own. It is easy to create prejudice by pushing separately to an extreme, each of the several principles which we hold together as balancing one other. Escaping, therefore, from the irksome and weary task of following a special pleader through all the details of his minute criticisms and cavils, I would desire, before I close, to show in a few general sentences,—that we can maintain the independent jurisdiction of the Church, without encroaching on any civil ordinance,—that we can assert the liberties of the Christian people, without interfering with the superintending authority of those who are set over them in the Lord,—and that we can treat with the State in regard to the terms of our establishment, when these are questioned, without abandoning for a moment the position which we have been called to occupy.

1. It is a very common practice in the present controversy, to confound the claim of our Church to independent jurisdiction of its own, with the Popish claim of supremacy over all other jurisdictions. Thus, (p. 22,) the Dean of Faculty exults in identifying a Presbyterian minister's commentary on certain texts of Scripture, with what he supposes would be the interpretation of a Popish bishop. Again, (p. 33,) he speaks of the General Assembly and its Commission carrying this claim to an extent fully as extreme as any proceeding of the Church of Rome. In his remarks also on the Assembly's resolution of 1838, (p. 98,) on the passage in the Second Book of Discipline which he gratuitously assumes to have been disallowed by the State, (p. 101,) and on the Confession of Faith which he labours to torture into an agreement with himself, (p. 100 and 105,)—as well as in his attack upon the Church's exercise of discipline over her own members and probationers, (p. 106, &c.,) he uniformly reiterates the same insinuation. I do not intend to enter into many of the points which he raises. I am not about to discuss with him the authority of the Second Book of Discipline, nor will I dwell on the strange distinction which he makes between things spiritual and things ecclesiastical, for the purpose of bringing out a difference between that book and the Confession

of Faith. Every one, even slightly read in the learned debates of former days, must know, that in the great question of the respective limits of civil and ecclesiastical power, there is no room for any such distinction. All the matters about which either of these powers could be conversant, were necessarily brought under two heads, corresponding to the powers themselves, viz., matters civil and matters spiritual or ecclesiastical. The question at issue concerned the right of the civil powers to meddle with matters ecclesiastical, and the right of the ecclesiastical powers to meddle with matters civil. That question being disposed of, there might arise a doubt in regard to any particular matter, whether it was ecclesiastical or civil. But one or other it must be; or if one part of it was ecclesiastical and the other civil, still each part must fall to be itself decidedly classed on one side of the alternative. There was, and could be no neutral ground, no *tertium quid*, such as the Dean of Faculty, not very logically nor very learnedly, imagines to have existed. The real point in debate was this; it being admitted that there are two kinds of matters to be administered, and two kinds of powers to administer them, how are these to be respectively allotted and adjusted? But waiving this, what is the ground of the charge now brought against our Church? It seems that we assert a right in Church Courts to determine what is an ecclesiastical matter, and as such, subject to their ecclesiastical power. But we allow the same right in Civil Courts, to determine what is civil, and as such, subject to their civil jurisdiction. And what is the evil which may thence arise? Simply that the same matter may be determined by the one Court to be ecclesiastical, and by the other to be civil, and each may claim a right to dispose of it; the one settling all questions regarding it in its ecclesiastical relations,—the other, in its civil. This may be a great inconvenience, and may introduce some disorder. But it is not in the least analogous to the Popish doctrine, which, in the first place, claims for the Church the prerogative of withdrawing altogether from the jurisdiction of the Civil Courts, even in respect of its civil relations, whatever the Church declares to be ecclesiastical; and which, moreover, in the second place, claims for the ecclesiastical power itself a direct control over the civil, an arbitrary right both to prevent and to order civil decisions. And in truth it appears, that the principle complained of, instead of confounding the jurisdictions, is the only way to keep them distinct. No doubt, each power may intrude into the province of the other. But how can this be altogether prevented, except by subjecting the one power absolutely to the other, either the civil to the ecclesiastical, with the Papists, or the ecclesiastical to the civil, with the Erastians?—And if the Church leaves all matters whatsoever at the disposal of the Civil Courts in all their civil relations, it is not easy to perceive where the great civil danger lies.

It is said, indeed, that an ecclesiastical sentence, even though it relates directly to ecclesiastical privileges, may affect indirectly the civil interests of individuals: and it is on this ground that so great a cry has been raised against the idea of the Church exercising discipline

over those who have certain civil interests involved in their ecclesiastical standing, and whose ecclesiastical standing is entirely under her own control. This is admitted to be true, and, indeed, it is unavoidable. But we say, on the other hand, that a civil sentence respecting these very civil interests, as affected by our ecclesiastical sentence, may materially interfere with us. But we do not on that account refuse to acknowledge the competency of such a sentence; we yield to it unreservedly our persons, our property, our entire civil standing; every thing, in fact, except the very ecclesiastical sentence itself, which, because it is ecclesiastical, we cannot yield. If it affects civil interests, we cannot help that. It is not because it affects civil interests, that we pass it, but because it is itself ecclesiastical. And surely, when we admit that these civil interests may, notwithstanding our sentence, be disposed of by a civil decree, and when we claim for ourselves no exemption from that decree, as to all its civil effects, we place ourselves in a position the very reverse of that which was held by the Church of Rome.

I am persuaded that these considerations are quite enough, if fairly weighed, to vindicate the resolution of the late General Assembly, which, whatever the Dean of Faculty may say, did leave all civil interests connected with the case of Auchterarder entirely at the disposal of the Civil Court. The Church makes no claim now to the temporalities of the benefice. These remain to be settled by the ordinary course of law. And whatever other measures the Civil Courts may see fit to adopt, for asserting the rights or redressing the wrongs of individuals—so far as their persons, and properties, and civil standing are concerned, the Church will claim no immunity for any of the members of her judicatories. If the Dean of Faculty would ask more, he must be told that there may be civil tyranny as well as ecclesiastical domination;—and that the Church has not always been a tyrant over men's liberties. She has sometimes been the champion of the rights of conscience, when law as well as power stood forth against them.

2. Much is said by the Dean of Faculty respecting the inexpediency of the Veto law, as well as its inconsistency with the due subjection of the people to their ecclesiastical superiors. He expatiates on the unfitness of the people for the exercise of so absolute a right. Now, I am not going to assert their perfect fitness. I admit all that the Dean says respecting 'the corrupt nature of man and his aversion 'to the truth,' (p. 201,) though I may think it strange that he should seem to assume patrons and presbyteries to be less disqualified by this cause from judging than the people, and though I may differ from him as to the extent to which even unrenewed men may recognise and appreciate the preaching of that Gospel which commends itself to every man's conscience. But I am no believer in the infallibility of the popular will generally, nor in the uniform worth and wisdom even of the members of a Christian congregation. The Dean, however, goes much too far when he assumes that we have no greater security for their judging fairly than that 'discernment of the Gos-

'pel which is to be found in the *natural*, the *uninstructed*, the *unre-*
'*generate* mind of man,' (p. 205,)—and when he asserts, that, accord-
ing to the doctrine of their having 'committed to them the power
'and responsible duty of trying the spirits, it is not the province of
'the Church to inquire as to their fitness for this duty,' (p. 207.) It
surely is the province of the Church, in admitting any to Christian
privileges, and continuing to them the enjoyment of these privileges,
to inquire as to their fitness for all the duties of the Christian life,
and especially for those duties, to which their standing as members
of the Christian Church, particularly calls them. It is the province
of the Church, moreover, to use all competent means, by instruction,
by discipline, by watchfulness, by prayer, to raise their fitness to the
very highest standard. This is the true answer to those who dwell
on the possibility of the people in a parish being in such a state as
to reject a presentee simply because he preaches the truth. The
Dean of Faculty contemplates this as a very possible case, (p. 201;)
and he expresses his entire concurrence with Dr Muir in his objec-
tion, 'that the present measure affords no security for the introduc-
'ing of sound and evangelical teachers, in the times when the people
'have come, through defection from the truth as it is in Jesus, not to
'choose wholesome doctrine; and when, therefore, in the exercise of
'their simple resolution and sovereign pleasure, they may reject godly
'and faithful teachers, whom the Church is bound to provide for the
'people, whether they will hear or whether they will forbear.' (p. 174.)
Now I can conceive of parishes thus situated. I can conceive also of a
line of policy but too well fitted to bring parishes into this condi-
tion; the very policy under which the Church and the country
groaned for the better part of a long century. But it is a refinement
in cruelty to visit on the Christian people the sins of those who
should have been their shepherds; and it is rather too much that,
after tolerating to such an extent, unsoundness of doctrine, unfaith-
fulness of ministerial conduct, and a total relaxation of discipline in
far too many of our parishes, we should plead the consequences of
our own neglect, as a reason for withholding from them a privilege
which they might abuse. But apart from this, surely the right me-
thod of obviating such a risk as is apprehended, is to resort to a
strict but kindly exercise of superintendence, and to the use of means
of instruction and revival. The Church Courts have the keys of dis-
cipline and doctrine. They receive candidates into communion, and
ever afterwards they are bound to watch over them. And though
there may be something in what the Dean of Faculty says, (p. 203,)
of the greater variety of human characters which an Established
Church, rather than a Dissenting body, attracts within its pale,—as
well as in what he says in another place, (p. 173,) as to the 'diffi-
'culty of accurately getting at the opinions of laymen, on doctrinal
'subjects,'—still these circumstances do not deprive the Church of
her absolute and uncontrolled discretion in the admission of mem-
bers, and by no means exempt her from the obligation of taking care
that her communicants shall, as far as possible, be men of sound

views and of consistent conduct,—that they shall be instructed in the knowledge of the truth, and inspired with the love of it. Besides, in the very exercise of their privilege of dissent, there is no principle that should exempt them from all discipline and control. I confess indeed that, knowing the temper of Church Courts in time past, I would be jealous, in the case of many Presbyteries, of their disposition to abridge the liberty of congregations, and I would not choose to see communicants, on any slight charge of unworthy conduct, disfranchised. At the same time, there is nothing in the nature of the people's right, which should prevent their ecclesiastical rulers from interfering to suppress disorder and disaffection, even, if it were necessary, with a high hand; and in all cases they are entitled and bound to adopt all judicious measures for discouraging faction, removing causeless prejudices, and promoting the interests of righteousness and peace. The Dean of Faculty may say that a privilege subject to any restraints is no right at all, (p. 25;) or, he may deprecate the interference of Presbyteries as a mere device for gaining influence to themselves, (p. 255,) and he may ungenerously pervert the wise and salutary caution of the General Assembly, warning their people against the natural abuse of a newly regained power, into a confession of error, (p. 44,) or a scheme of ecclesiastical aggrandisement. (p. 251, &c.) But it will occur, I should think, to most men, that a right possessed by the people, solely in virtue of their ecclesiastical standing, must be held on the same terms on which that ecclesiastical standing itself belongs to them. Nor is there really any inconsistency between a full recognition of the privileges of the people, and a due exercise of superintendence over them, in the use of these very privileges. On the contrary, as I firmly believe, it is when the privileges of the people, as members of Christ's Church, are placed on a broad and secure basis, and when they have confidence in the Church as the guardian of their liberties,—it is then that the authority and influence of their rulers will be most cheerfully acknowledged, and most beneficially exerted.

3. I beg to offer a single remark on what the Dean of Faculty alleges relative to the true position of the Church in her present negotiation with the State. He charges the Assembly's Committee with putting a false colour on this matter in their "Statement."—'In giving an account of the resolution of the Assembly, and of the position thereby taken by the Church, there is in the "Statement" of the Committee the same erroneous representation of the object and effect of that resolution which runs through part of Dr Chalmers's speech. It is very singular that there should be such anxiety to keep back the plain facts,—(1.) That the Veto Act is in general terms adhered to and enforced. (2.) That it remains at present as enacted in 1834. (3.) That even the amended *regulations for carrying it into effect* were re-enacted this year. And, (4.) That the Presbyteries are *thereby bound*, and were, moreover, *specially directed* to act upon the same. Why is this so wrapt up in obscurity? . . . . The Committee say in their "Statement,"—'*We supersede*, therefore,

" the discussion of the inquiry—which is the right interpretation of " the law? that which the Civil Court has now adopted, or that on " which the Church proceeded? We do not *now* involve ourselves in " a legal question in controversy with the Civil Court. We apply " ourselves to the accomplishment of a practical object, through means " of a negotiation with the State itself—the Legislature. We inform " the State, that according to the principles of our constitution, we, " in our spiritual department, cannot acquiesce in the terms on which " the Civil Court has declared that we hold the privileges of our Es- " tablishment. We ask the State, for the sake of the great ends for " which an Establishment is instituted, to consider how the terms of " it may be arranged, so as to be in accordance with what we under- " stood them to be, and what we think they ought to be. Such, in " *substance, may be regarded as the real position* which the Church has " assumed in the recent decision of the General Assembly, and the " subsequent appointment of a Committee; such is the proper busi- " ness given in charge to the Committee.'

' Now, this is not the position taken by the Church. The resolu- ' tion of the Assembly does not start from a general principle,— ' throwing aside the contest as to the competency of the Veto Act, ' as a thing gone by, and rendered immaterial by the Church taking ' a *new* ground.'

Here the Dean of Faculty confounds two things that are quite distinct; the position of the General Assembly as determining the Church's line of duty in a certain crisis, and its position as negotiating with the State in regard to that crisis. To illustrate this, let me suppose the case of two independent powers in close alliance, and a misunderstanding arising on some practical point as to the terms of that alliance. The one party, in these circumstances, might very fairly say to the other,—We desire to treat with you now, without reference to the interpretation which on either side may have been put upon our contract. It is true, that in the matter in question we feel ourselves constrained to act according to our own understanding of its conditions, for it was upon that understanding that we consented to the alliance, and we cannot conscientiously act otherwise. But it is not necessary for us, in treating with you, to discuss this question at all; for we are prepared to contend, that whatever your understanding may have been of our respective rights hitherto, it is not unreasonable nor inexpedient that you should concede what we ask now. I am aware the Dean of Faculty, as for the other party, may reply,—All this would be very fair, if there were not an authoritative decision already given on the point in dispute between us—an authoritative interpretation of the terms of the contract relating to it. Open a correspondence by all means for an alteration in these terms, but, in the meantime, submit to what has been found to be their import. To this I answer,—that as, by the supposition, the two powers are independent, there can be no authority to judge between them; and in the event of a misunderstanding, there is nothing for it but either a total rupture, or a new adjustment of the treaty, as between equal and co-ordinate authorities. On this footing, we repeat to you,

that, waiving the question as to which of us is right in interpreting the treaty as it has existed hitherto, we have a special argument to urge. There is an insuperable obstacle to concession on our part; there is none on yours. And we hope to persuade you that you may, with all safety, and with great advantage, adjust the treaty now according to our views.

Now, I do not ask the Dean of Faculty to admit this illustration as sound, for he does not admit that theory of the alliance between Church and State on which it is founded. But I ask him to understand it; and if he does, I think he will greatly modify the language which he has used in speaking of a passage in one of our Tracts, (p. 83.) That passage points out a distinction between a charge of rebellion or resistance to law, and a charge of breach of contract. I fully allow that this distinction has no meaning according to the Dean of Faculty's theory of the alliance—nay, that it is Jesuitical, mischievous, alarming. If the Church be subject to the State, or if there be a supreme tribunal authorised to determine judicially all questions between them, then undoubtedly, whenever, in regard to any point, the contract is interpreted by that tribunal in a particular way, the Church is bound to submit. She may have acted in good faith hitherto in adopting a different interpretation; but if she continue to do so now, she is guilty of a wilful breach of contract, and that is, in this instance, equivalent to rebellion. But the case is very different, when we view the alliance between Church and State as an alliance between independent powers. In that case, there is plainly no room for the charge of rebellion at all. And in regard to the other charge also, we have a sufficient vindication. We have not wilfully broken the contract, for we have not understood its terms to be inconsistent with what we have been doing. Now, indeed, it turns out that there is a misunderstanding on the subject. We hasten, therefore, to confer with the only party whom we acknowledge in this matter as equally entitled with ourselves to decide. And in conferring with that party, we propose that, all legal argument apart, on general considerations of religion and of patriotism, the representation which we make, in the name of Christ our Great Head, and of the people whom He has admitted into his Church, should be favourably entertained. *

In entering upon this negotiation, we have not shown any disposition to prolong litigation, or to involve this most important general

* I do not advert to the Dean of Faculty's strange account of the Committee's report to the late Commission, believing that if necessary, Dr Chalmers will amply explain what has been so grossly misrepresented. Nor do I notice the insinuations made in certain quarters regarding the studied concealment of the Committee's documents. The idea is really too absurd to be seriously entertained. The Dean of Faculty, in his commentary on them, might profit by their being unpublished. But they were at all events public enough to take away all hope of the shelter of secrecy from the Committee themselves. I am glad at any rate to have this opportunity of submitting them entire to the judgment of all who will candidly consider them.

question in any new practical difficulties. In regard to the instances of collision which have already occurred, we make no farther appearance in the Civil Court;—although every lawyer I believe, except perhaps the Dean of Faculty, knows and admits that, even after the decision of the House of Peers, we might have raised many plausible points in the subsequent stages of the Auchterarder process; nay, that very possibly, by a change of tactics,—by professing to yield obedience, and taking the presentee on trials, still proposing, if the way were not more open to his harmonious settlement, to reject him on our own ecclesiastical authority as disqualified, and to decline his induction as inexpedient,—we might have placed the Civil Courts in a far more unfavourable position, and might have baffled their jurisdiction after all. But we did not resort to such policy, although some who now censure us would seem to point to it. We had rejected the presentee as unacceptable; and not being prepared to abandon that ground of objection, we could not fairly assume any other. But we went as far as we could in the way of recognising the sentence of the Civil Courts. We yielded our claim to the temporalities. And we did so, not on the pretence, which has been expressly disclaimed,* that we may choose between the alternatives of either obeying the law or suffering the penalty,—a doctrine which we reprobate as strongly as Mr Haldane does in a passage which has been somewhat irrelevantly quoted in this controversy,—but on the plain principle, that though we cannot actively obey the decision, in so far as it affects our ecclesiastical judgment as a court of Christ's Church, we can and must obey it, in so far as it affects our persons and properties,—in so far as it touches any of our civil rights and interests whatsoever. The Dean of Faculty's allegation, (p. 77,) that the trustees of the Widows' Fund, a civil and secular corporation, are the same, in this question, with the General Assembly, can scarcely, I should hope, impose even on the most ignorant and prejudiced. The Church claimed the stipend solely as available for the support of a minister in the parish of Auchterarder. That claim she now abandons. To what party it may ultimately be assigned as vacant stipend, is a matter entirely different, in which the Church has no concern.

In regard again to the future, the Church has taken precautions to prevent, as far as possible, any new instance of collision with the Civil Court, during the present year. The law of non-intrusion, it is true, is still unrepealed, and the interim regulations are again transmitted and enacted. But disputed cases are to be suspended till the meeting of the next General Assembly, to which they are to be referred. The Dean of Faculty, as usual, finds a mere trick here; (p. 81,) for he can give us no credit for good faith in any thing. According to him, there can be no disputed cases at all; at least there can be no possibility of referring them. Presbyteries, even under these instructions, must still in every instance of dissent, proceed to reject the presentee, and the only point which they are to refer is the pro-

* See Non-Intrusion Tract, No. IX.

priety of exercising the *jus devolutum* which may thereby be said to fall to them. It is painful to deal with such perversity as the Dean exhibits. Surely it is competent for a Presbytery, after taking the usual steps, in terms of the regulations, when they find an apparent majority of dissents, to sist procedure before pronouncing a final judgment, and send up the whole case to the Assembly. And this, it is presumed, would prevent its being carried, at least in the meantime, into the Civil Court. It needed no great compass of understanding to conceive of this as a thing that might be done. It needed no great extent of charity to believe that this might be what the Assembly meant.

The Church, then, has shown an anxiety on her part to suspend the contest with the Civil Courts. Whatever may be our efforts in other directions,—however strenuously we may prosecute our design of appealing both to the Government and to the people on the general question of an adjustment of the law of patronage,—we are willing and anxious that, so far as we are concerned, no farther cause of collision under that law should occur, until it be seen if an arrangement is not practicable. Nor would there have been any great inconsistency in other parties meeting us in the same spirit. Neither the Church nor the Civil Courts being prepared to recede from the positions which they had respectively assumed, they might both have abstained from taking any farther step in advance. And thus the knot having been made apparent, a brief interval might have been allowed on both sides for all measures of consultation, if by any means, before it became more intricate, it might be untied.

But the processes in the Civil Courts are going on. There are men evidently bent on hastening a crisis; and in the increasing embarrassment of new legal proceedings, rendering the confusion, as they hope, more and more inextricable, they would shut out the chance of a timely adjustment. I fully believe that this is their last and only chance. For if a very little time is allowed, I am persuaded that our cause is gained. There are, even among our opponents in the Church, those who can look a little beneath the surface and beyond the present. It is very easy, and may be pleasant to some to speak of the compulsory ejection or the voluntary secession from the Church of the men whose scruples, or whose convictions will not bend to the judgment of a court of law. But it should be remembered that, if the Church continues in her present mind, it is not a few individuals that must retire, it is as a Church that she must be severed from the State,—and that, not by her own act, but by the act of the State. And for what? Because she requires that she shall not be compelled to support patrons in the arbitrary exercise of their power, in contempt of those Christian congregations on whose behalf that power is held in sacred trust. This is the sum and substance of her demand. Various questions indeed may have arisen in the course of this procedure. And difficulties may be suggested and objections offered, in regard to every scheme proposed. But after all, if the voice of the congregation is really to be attended to, there is no serious fault to

be found with the present plan, which might not be balanced by faults equally serious in any other. Charges, again, of canvassing and cabalting may be multiplied—exaggerated pictures may be drawn—scenes abundantly offensive may, by the coarsest and clumsiest art, be crowded together; and a prejudice may thus be raised against the character of our congregations, which all who know the working of our Scottish system, whether among Churchmen or among Seceders, know to be in general most unfair. There would be no difficulty in recriminating and retaliating; for certainly in our land patronage has not been quite immaculate. But I willingly abstain. Such arguments are fallacious as well as offensive: and the admission of the popular element in the settlement of pastors may be vindicated on other and higher grounds. It is not unreasonable in itself, that those who have been admitted to the standing of communicants, should be regarded as capable of forming a sound judgment, on a matter that concerns the edification of their own souls. It should tend to consecrate the pastoral tie, and to render it more close and endearing, that it is formed—not against their consent. It is desirable that they should not be in a state of cold indifference in regard to the minister who may be placed over them; and if they do take an interest in this at all, it is essential that they be not dissatisfied. The Word of God seems to point out the propriety of their being consulted; and all history, in our country at least, testifies against the expediency of violent intrusion. The Church has always more or less decidedly professed to acknowledge the people's claim; and now that she has begun to assert it in a definite and explicit form, (and without this it never can be secure from evasion or oppression,) may it not be confidently hoped, that—while the wiser portion even of those who question what she has done, yield their own doubts in her time of danger,—her true position will come to be better understood, and the value of her present struggle better appreciated, by all classes of our countrymen, to whom she can be useful only in so far as she is influential, and among whom she is then most influential when she is most faithful to her Great Head, and most true to the interests and privileges of His people.

APPENDIX.

NOTE referred to in Page 17.

To prevent misrepresentation and cavils to which in this discussion we are so much exposed, it may be proper to show here to what extent and in what sense the Scriptural and Divine authority of Presbytery was pleaded in reference to its general features, and in reference also to its subordinate arrangements. For this purpose I subjoin the following extract:—

"I cannot enter fully on an argument like this, which would require to be discussed at great length. I may simply refer to the general principles which we hold to be established, by the authority and example of the apostles, as their practice may be gathered from the brief hints and notices given in the New Testament, regarding the churches which they formed. The system which they adopted is not in any part of the inspired record fully unfolded—and perhaps it was not always uniform. But certain leading features may be traced throughout. Thus, the institution of deacons, charged with the care of the poor and the temporal concerns of the Church, is placed beyond question by the fact recorded in the sixth chapter of the Acts. Then, in addition to this office of a secular character, we find repeated mention made of another order of office-bearers in all the Churches, called "presbyters," or "elders," as being men of grave authority; "bishops," or "overseers," as having the spiritual oversight of the flock, and described as having rule over the Christian people, and watching for souls as those who must give account. And the only distinction which we can recognise in this last class is between the elders or presbyters, who merely "rule," and those who, besides ruling, "labour in word and doctrine," (1 Tim. i. 17.) a distinction which seems to lay a foundation for the difference which we make between the ruling elder and the teaching elder or pastor, as holding separate offices, or rather separate branches of the same office. Beyond this simple order, we can discover nothing in Holy Scripture, regarding the early government of the Christian society, excepting only the extraordinary powers exercised by the apostles themselves, and by evangelists specially commissioned by them, not as settled superintendents of particular dioceses, but as agents employed at large in forming and organizing new Churches in all different parts of the world. But in this simple order, we have full warrant for the ordinance of a standing ministry, authorised by Christ himself, to rule his people, and to confer their own office on others, by solemn imposition of hands. We consider also that the New Testament gives evidence of a union between different Churches and their office-bearers, and a control vested in councils of these office-bearers over particular Churches and their members. Thus we maintain, in the words of the illustrious M'Crie, that the leading principles of Presbytery rest on the authority of God, and that its subordinate arrangements are supported by the general rules of Scripture. They are simple, and well calculated to preserve order and promote edification, equally opposed to arbitrary and lordly domination on the part of the clergy, and to popular confusion and misrule; establishing an efficient discipline in every congregation, and preserving that unity which ought to subsist among the different branches of the Church of Christ."—*Commemoration Speeches, p.* 37.

STATEMENT unanimously agreed to by the Committee of the General Assembly on the Act anent the calling of Ministers, appointed in consequence of the following Resolution of Assembly of 22d May 1839 :—

[*The Committee here insert the Resolution of the last General Assembly.*]

THE COMMITTEE having fully deliberated on the whole subject remitted to them by the General Assembly, deem it right to embody, in the form of an official statement, the views which they entertain in regard to the object which must be sought in their negotiations, the best and most expedient way of accomplishing that object, the precise import of the measure which may be necessary, and the considerations which seem to render a speedy adjustment of the question most desirable for all the parties concerned.

I. It is important that there should be a clear understanding of the precise nature of the business with which the Committee are charged. For this end, the occasion of their appointment must be rightly considered. Without entering into details, or discussing the merits of the recent decision of the General Assembly, it is enough to remark, that while it does substantially bring the judgment of the Supreme Ecclesiastical Court, in regard to the terms on which the benefits of the establishment are secured to the Church, into direct variance with the judgment of the Supreme Civil Court on that point, it seeks to remedy this evil in the way most consistent with the real integrity of both of these tribunals. Each of the two Courts is in the attitude of adhering to its judgment, as in present circumstances final. But there is this difference. The Civil Court must be held as saying, that, as the law of the land at present stands, a certain course of procedure, on the part of the Church, is to be regarded as involving a forfeiture of the conditions of its establishment. On the other hand, the Ecclesiastical Court has held, *not only*, in the first place, that, as they have interpreted the law of the land, and conceive themselves still entitled, for their own spiritual purposes, to interpret it, that course of procedure has always been, and is still competent to the Church, as established ; *but also*, secondly, that it is a course of procedure, to which, on the ground of its obligations as a Church of Christ, the Church is bound to adhere. Thus, there is a misunderstanding between two tribunals, each in its own sphere supreme. But there is an element on the one side which is not on the other. The Civil Tribunal may be regarded as saying,—We look to the law of the Church's establishment as it is. We have nothing to do with what it should be. The Ecclesiastical Tribunal, on the other hand, being the deliberative organ of the Church, must be held as saying,—We, too, looked, and still look, to the law as it is. We conceived, and we still conceive, that it warrants the measure which we adopted. But farther, we are of opinion that, in order to the Establishment being based on sound principles, the law should have been, and should still be, such as we have in good faith conceived it to be. If we were not decidedly of this opinion, and did not regard the matter involved in it as essential, we might yield our interpretation of the law to that of the Civil Tribunal, even although we held our own to be the right one. We might interpret the law for our spiritual purposes, in the same way in which that Tribunal does for its civil purposes ; and so the collision might end. But, maintaining our opinion in regard to the principle at stake, we must hold, that, even if we were wrong in our interpretation of the existing law, we are bound to use every effort to have the terms of the Establishment adjusted and ex-

plained, so as to be in accordance with that principle which we consider sacred. We supersede, therefore, the discussion of the inquiry,—Which is the right interpretation of the law?—that which the Civil Court has now adopted, or that on which the Church proceeded? We do not now involve ourselves in a legal question, in controversy with the Civil Court. We apply ourselves to the accomplishment of a practical object, through means of a negotiation with the State itself,—the Legislature. We inform the State that, according to the principles of our Constitution, we, in our spiritual department, cannot acquiesce in the terms on which the Civil Court has declared that we hold the privileges of our Establishment. We ask the State, for the sake of the great ends for which an Establishment is instituted, to consider how the terms of it may be arranged, so as to be in accordance with what we understood them to be, and what we think they ought to be. Such, in substance, may be regarded as the real position which the Church has assumed in the recent decision of the General Assembly, and the subsequent appointment of a Committee: and such is the proper business given in charge to the Committee.

II. In considering how the object for which they are appointed may be best attained, the Committee feel that they must be guided mainly by a regard to the principles which the Church has always held on the subject of the settlement of Ministers, and in particular the great principle of non-intrusion, as the Church itself has explained it. By the act of Parliament 1567, which declares, "that the examination and admission of Ministers, be only in the power of the Kirk,"—by that and other civil statutes, the Church has considered itself warranted, even as an Established Church, in applying its own principles to this matter, and regulating, according to these principles, the course of its procedure. Accordingly, in various ecclesiastical statutes, the Church has declared what these principles are, and, in particular, has asserted, as a fundamental principle, "that no pastor shall be intruded on any congregation contrary to the will of the people." Even since the re-enactment of the law of patronage, in 1711, the Church has uniformly acted on the assumption that it had the right to enforce that principle, according to its own discretion, in the sense, and to the extent, which it might itself judge proper. The Church held itself entitled to determine, in each particular case, how far that principle was to be recognised, and in what way it was to be conserved, in the settlement of parishes, under the exercise of patronage. In the act 1835, the Church considered itself as simply doing, in regard to the question of the settlement of Ministers as a whole, what it had a right to do in each particular case; and in that act, the Church must be held to have substantially declared the principle on which it now considers that all these cases ought to have been decided. It would seem, therefore, that what the Church should now desire, is not any enactment of a law of non-intrusion—as if *de novo*—by the State, but rather a recognition, on the part of the State, of what the Church itself has done for asserting and enforcing that principle in its own way, and under its own regulations.

This view is confirmed by a consideration of the several plans which might be suggested for adjusting the matter at issue.

1. It might be proposed that the law of Patronage itself should be altered, so as to place the right of nomination on a wider and more popular basis than at present. To effect this, the act of Queen Anne would have to be repealed; and, in that case, we would fall back upon the law of 1690. It is plain, however, that, in the present state of matters, the law of 1690 could not, on any principles, be satisfactory without very material modifications. Thus (1), the qualification of an heritor in respect of property must be defined, in order to prevent the evils arising from that undue multiplication of electors which is found to be competent under the law in question, as it is now interpreted (as

in the case of Cadder, &c.) Here there is considerable practical difficulty. Then (2), it must be made an indispensable condition of qualification, that the heritors who are to elect shall be in full communion with the Church. This is necessary, to exclude those who may be altogether hostile to our Establishment; and it is in itself right in point of principle. But it must be observed, such a test would strike at a large class who are not at present legally disqualified; and that the re-enactment of the law of 1690, with such an express limitation, is not likely to be so favourable to the landed interest as at first sight it might seem to be. Besides (3), it would be necessary, if this mode of adjusting our present difficulties were entertained, to institute a very thorough investigation into the grounds of the assertion contained, in the preamble of the act of Queen Anne, that the working of the law of 1690, had occasioned great heats and divisions. And (4), There is great reason to think, that any proposal to repeal the act of Queen Anne would meet with such determined opposition in many quarters, as to render the measure altogether impracticable, without a struggle so protracted, that, in respect of the adjustment of our present difficulties we could not afford to wait the issue. In these circumstances, it is clearly inexpedient for us, as a Committee appointed simply to consider in what way, consistently with the great principle of non-intrusion, the privileges of the National Establishment may remain unimpaired, to press a measure which goes so much farther than the mere prevention of the evil against which we have to guard, and which changes so entirely the whole manner of the appointment of pastors.

2. The sanction of the Legislature might be sought to the requisition, on the part of the Church, of a positive Call by the people. In many respects, this might be regarded as a material improvement upon the present state of the law of non-intrusion. From the first, there has been a pretty general feeling in the Church, that the positive Call is preferable to the provision of the late act of Assembly, as having less of the appearance of an innovation, and as placing the people in a fairer and less invidious position. It is to be observed, however, (1), That this would certainly be looked upon as imposing a greater restriction on the rights of Patrons, than the present form of the law does. To *require* a positive *assent*, is a stronger measure, as a check on the exercise of patronage, than merely to *permit* a *dissent*. Again, (2), There might be difficulty experienced in defining sufficiently what kind or degree of positive concurrence should be held necessary. If, indeed, the Legislature were disposed to leave the point altogether indefinite,—recognising the power of the Church to determine, either generally, or in reference to each particular case, what should be regarded as a sufficient Call; and simply declaring, that the act of the Church, requiring what it might judge a competent Call, whatever that might be, should carry civil consequences: in that case, the matter in question, between the State and the Church, would be placed on a very satisfactory footing. At the same time, it may be thought reasonable and expedient, that the Legislature, when asked to give its civil sanction to this kind of limitation of the law of Patronage, as now interpreted by the Civil Courts, should have some satisfactory assurance in regard to the extent of that limitation. And in declaring whether the Church might require a majority of the congregation assenting, or any other definite proportion, considerable room for discussion might arise, and the Legislature might be required to go farther in the way of precise enactment, and to lay down rules more particularly than it might be proper, on such a subject, to ask them to do, or to give them an occasion for doing. Farther, (3), It is most important to observe, that the Church has already fixed upon the present method,—as upon the whole, and in all the circumstances, a suitable method, inasmuch as it is strictly and literally limited to the mere prevention of

intrusion,—to the ascertaining of unacceptableness,—under the check, moreover, of a solemn declaration, by those dissenting, that they are actuated by no factious or malicious motive, but solely by a conscientious regard to the interests of themselves and the congregation. And, in dealing with the State on this subject, it is undoubtedly better for the Church to adhere to what has already been sanctioned by its own statutes, rather than open up the question by proposing for discussion an entirely different plan.

3. On the whole, the Committee are decidedly of opinion that they should assume as the ground or basis of their negotiations, the existing law of the Church. This course affords a plain and well-defined ground, on which we may meet, both with Patrons and with the Legislature. It is calculated to give the least possible alarm, as it is undoubtedly the most moderate measure that can be pressed by us. It has no tendency to unsettle present arrangements. And above all, it requires less, in the way of direct interposition on the part of the Legislature, than any of the other plans that might be proposed. This, in such a case, is a consideration of great importance. Having a law of our own which we continue to maintain, all that it is necessary for us to ask, is an acknowledgement by the Legislature, that when we put that law in force, according to our own regulations, our proceedings shall be effectual, as regards the settlement of the temporalities of our Establishment.

The Committee are confirmed in their opinion as to the propriety of adhering to the present form of the law of non-intrusion, by the experience of the few years during which it has been in operation. Notwithstanding the various difficulties which might naturally be expected to attend the introduction of a new measure, until the several parties interested should fully ascertain their respective positions so as to go on harmoniously together, and notwithstanding the unfavourable circumstances arising out of the present collision with the Civil Courts, under which the experiment has been tried, the system has in general worked well. Settlements, on the whole, have been quiet and satisfactory. Instances of the rejection of presentees by congregations, have been rare, and it has been found that a presentee rejected by one congregation has immediately been welcomed by another—a fact which shows that a pastor not acceptable in one place, may be suitable for another; and that the present law is not so injurious to probationers as it has been represented to be. Cases of disputed settlements have been few in proportion, although they have on that very account made much noise. And, for the most part, enough has transpired to make it evident, that where the several parties concerned have acted with due consideration, the result has been such as all can approve.*

III. On these grounds, the Committee are inclined to think it most desirable that the State should interfere in this matter, not so much for the purpose of legislating anew for the Church, as for the purpose of giving a civil recognition and sanction to the law of the Church itself, removing all misunderstanding in regard to the civil consequences of that law, and providing that the Church shall not, because it has seen it to be a duty to legislate as it has done, on that account merely, forfeit the privileges of its establishment. In this view, what is asked of the Government and Legislature of the country seems very simple, reasonable in itself, and entirely respectful to the civil tribunals, whose decision has rendered an application to the Legislature necessary. Even assuming their decision to be indisputable, as determining what the law of the establishment

*During a period of five years the number of presentations issued under the present law of non-intrusion, (exclusive altogether of appointments to unendowed churches,) has been about 150; and the instances of the rejection of Presentees by Congregations have been ten.

of the Church is, the State may deem it inexpedient to insist upon their interpretation of the law, in opposition to the conscientious judgment of the Church itself, acting as the guardians of the spiritual interests of the people. It might therefore be enacted, without reference to the question of what the law hitherto has been, that it shall henceforth be understood to be competent for the Church, without forfeiting the civil rights and privileges of its establishment, to act in accordance with its own declared principle of non-intrusion. Such an arrangement would clearly show what is the utmost extent of the limitation which the Church has sought to impose on the exercise of Patronage; and at the same time, the authority of the Church would be reserved entire to regulate, within that limit, its own proceedings in this matter according to its own judgment. It might farther be necessary to provide, that, whatever may be the rights or interests of other parties, the power of the Church judicatories to judge of the qualifications of ministers, and of their suitableness for the parishes to which they are appointed, must be maintained inviolate.

It is to be observed, that, in dealing with the Government and the Legislature on such principles as those now laid down, the Committee do not in any degree compromise the authority of the Ecclesiastical Judicatories, as it may be exercised in the matter of the settlement of Ministers; nor in any way commit the Church, further than the Church has been inclined to commit itself. We do not ask the State to *enact* and *ordain* the present law of non-intrusion, but simply to *allow* it, in respect of civil consequences, as enacted and ordained by the Church. We require that, to a certain definite and specified extent, the Patron's right shall be held to be limited, in order that the Church shall be able to give effect to the will of the people. But within that maximum it belongs to the Church itself to do this, according to its own regulations. For it is to be kept in mind, that, in the whole of this negotiation, we are dealing with the will of the people, not in its relation to the authority of the Church Courts, but merely in its relation to the right of the Patron. Suppose our object gained—we have it determined, that the will of the people, as recognised by the Church herself, shall be held as a valid restriction on the will of the Patron;—that, in in so far as the Patron's right might interfere, the Church shall be held to have power, without fear of losing her established status, to give effect to the will of the people, as expressed to her own courts, and subjected to her own jurisdiction.

IV. The Committee cannot but entertain the hope, that when the amount of the Church's demand is fairly weighed, and the whole case, in all its bearings, calmly considered, it will appear that nothing violent or extravagant is contemplated,—nothing which may not be conceded, with manifest advantage to the country, and without any real or substantial injury to the rights or interests of any class of men. It can scarcely be thought desirable, in any quarter, that matters should be pushed to an extremity; and, however far many may think that the Church has gone wrong,—however they may dislike and disapprove of the plan which it has adopted for giving effect to the principle of non-intrusion, few, it is presumed, otherwise favourable to the continued existence of the Establishment, will be prepared to hold, that the Church's conscientious adherence to what it believes to be essential to its purity and its usefulness as a Church of Christ, is a sufficient reason for depriving the people of the land of the inestimable benefits which, by means of its establishment, it may still confer on them. It is not now merely a question as to the expediency or inexpediency of a particular law of the Church. It is really a question, how far the Church, by continuing to maintain, from strong conviction, a certain principle—which many may repudiate, but which the Church itself holds sacred,—has so completely lost all claim to the confidence of the State, or has been so injured or

impaired in its efficiency, that it can no longer be made the instrument of conveying the very greatest blessings, both temporal and spiritual, to the community at large. All who are not prepared to adopt such an opinion, may be willing to lend their help in procuring an adjustment of the law in its favour; being satisfied that, even with its present views, the Church ought still to be supported as an institution of great value to the commonwealth, and to be aided in its efforts to extricate itself out of its present difficulties.

In regard to Patrons themselves, the Committee would fain cherish the confident hope, that when they consider, as the Committee firmly believe that they will do, the great ends for which so important a trust has been constituted and committed to their hands, they will be disposed to acquiesce in a measure which the Church has declared to be essential to the attainment of these ends. The Committee know that the Patrons can have no legitimate interest in this matter, except to secure the appointment of good Ministers; and they are satisfied that they will not ultimately be averse to an arrangement, which, preserving all the influence which they can reasonably desire to have, tends, if duly followed out, to increase the efficiency of a godly ministry,—to secure peace and contentment among the people, and to unite in a good understanding the several ranks and orders of the community.

The Committee have felt the importance of giving their most anxious attention to the subject remitted to them, and maturing their views on it with the least possible delay, in order that proceedings may be adopted for the purpose of enlightening the community, removing misapprehensions, allaying groundless alarm, and conciliating parties interested. It is most desirable that the present state of suspense should be speedily brought to an end; that the public mind should be satisfied and set at rest. For this purpose, the Committee have been anxious to have their own minds well made up in regard to the course which should be followed, that they may go forward, trusting in the Great Head of the Church, to the farther prosecution of the work with which they are intrusted. They feel it to be their duty, so far as in them lies, to bring before all concerned, and especially before the authorities of the land, the real state of the question, so that an end may be put, at the very earliest possible period, to the doubt and distraction in which it is so very inexpedient that the Church and the country should remain.

SUPPLEMENTARY NOTE relative to the Statement of Committee of the General Assembly on the Act anent the Calling of Ministers.

The Committee having appointed a deputation to proceed to London, it has appeared proper to the members of that deputation to offer a few remarks in explanation of some parts of the Statement referred to.

I. The Statement of the Committee represents it as the object of the Church to obtain from the Legislature, not the enactment of a new law against the intrusion of Ministers, but rather a recognition and civil sanction of the law which the Church itself has already passed on that subject. It should be clearly understood, that this opinion of the Committee does not imply that the Legislature should be asked to recognise the Church's interpretation of the existing law of Patronage, or make a declaration in favour of the Church, and against the Civil Courts, in regard to that law, which these tribunals have understood differently. The Committee have fully given their views on that point in the first part of their Statement. It is plain that the Legislature must

be asked to make a new enactment modifying and restricting the law of Patronage, as now interpreted by the recent decision of the Civil Court. But the Committee think that the new enactment of the Legislature should be in accordance with what the Church has enacted as a proper method of carrying into effect the principle of non-intrusion, and should be limited to the object of giving a civil force and validity to that enactment of the Church.

For the sake of distinctness, and in order to illustrate the Committee's views and bring them to a precise point, it is submitted that the Legislature might be asked in substance to enact, "That in all cases in which the Presentee of the Patron of any living in Scotland shall have been rejected by sentence of any competent Church Court, in respect of the dissent of the major part of the male heads of families in communion with the Church, members of the congregration in the vacant parish, all right and interest of the Presentee in the presentation granted to him shall cease; and if the Patron shall not, within the period competent to him by law, present another qualified person, the right of presentation shall, for that vice, fall to the Presbytery *jure deroluto*."

It should be provided also and enacted, "That it shall always be understood to be in the power of the competent Church judicatories to take trial and judge of the qualifications of the presentee, and his suitableness in all other respects for the charge to which he has been presented."

It may be stated here, that the time competent by law within which the patron must present, is six months from the date of the vacancy. But when a probationer is presented and ultimately withdraws, or is rejected, the time during which his presentation has been before the Church Courts, is not reckoned as part of the period of the six months, but is deducted.

II. Another point, which it may be right to explain, is, that the Act of the General Assembly, declaring the fundamental principle that "no Pastor shall be intruded into a parish contrary to the will of the Congregation," and ordaining, that when "the major part of the male heads of families, communicants in the parish, dissent, the Presentee shall be rejected," is altogether distinct from the Regulations which were framed to direct the inferior Church Courts in the discharge of their duty in each particular case. It is the Act alone, which, by having obtained, in the usual way, the concurrence of a majority of all the Presbyteries of the Church, and the sanction of two successive General Assemblies, has become a standing law of the Church. The regulations have never as yet obtained the requisite concurrence of the Presbyteries, but have merely been enacted, *ad interim*, from year to year, by the General Assembly. They may be regarded, therefore, as still under the deliberation of the Church, and are not finally perfected and matured. Now, it is simply the Act itself, and not the regulations, that the Church wishes to have confirmed by a civil enactment. On the subject of the regulations, it is open to the Church to receive suggestions, and to make such changes as may seem expedient for the better carrying into effect the principles of the law. The Act is short, and is to the following effect:—"The General Assembly declare, that it is a fundamental law of the Church that no Pastor shall be intruded on any Congregation contrary to the will of the people; and in order that this principle may be carried into effect, the General Assembly, with the consent of a majority of the Presbyteries of this Church, do declare, enact, and ordain, that it shall be an instruction to Presbyteries, that if, at the moderating in a Call to a vacant pastoral charge, the major part of the male heads of families, members of the vacant congregation, and in full communion with the Church, shall disapprove of the person in whose favour the Call is proposed to be moderated in, such disapproval shall be deemed sufficient ground for the Presbytery rejecting such person, and that he shall be rejected accordingly, and due notice thereof

forthwith given to all concerned; but that if the major part of the said heads of families shall not disapprove of such person to be their pastor, the Presbytery shall proceed with the settlement according to the rules of the Church: And further declare, that no person shall be held entitled to disapprove, as aforesaid, who shall refuse, if required, solemnly to declare, in presence of the Presbytery, that he is actuated by no factious or malicious motive, but solely by a conscientious regard to the spiritual interests of himself and the Congregation."

Now, what the Church desires is, that the above Act shall be confirmed, as to civil consequences, by an enactment of the Legislature, to the effect that when a Presentee is rejected, in terms of this Act, the rejection shall be held valid; it being left to the Church to make the necessary regulations for the guidance of its own Judicatories, by whom the Act of the General Assembly is to be executed.

III. The Statement refers to the fact, that the Church held itself entitled even under the law of Patronage, to determine what effect should be given to the will of the people: that the Church always took steps for ascertaining the will of the people, and decided cases, as they occurred, on the assumption of its having a right to consider that element in the settlement of parishes.

This is a very important consideration; and in illustration of it, it may be necessary briefly to refer to the history of the Church's proceedings in this matter, after the re-enactment of the law of Patronage in 1711. That law came gradually into actual operation, and from the first, it was administered by the Church Courts themselves; the Civil Courts never interfering except in questions regarding the right to present: but in regard to the effect to be given to due and legal presentations, the Church Courts alone administered the law. Again, they uniformly administered the law, with a certain reference to what was understood to be a fundamental constitutional principle, that the will of the people, as expressed to them, should have weight. In 1736, twenty-five years after the re-enactment of the law of Patronage, the Church asserted and declared that principle. The Church Courts never understood the law of Patronage, which they administered, as preventing them from recognising the will of the people, or as binding them to settle Presentees, even when no objection was offered, who were not, in a reasonable measure, acceptable to the people. The usual way of ascertaining this point, was by the old immemorial practice of the Call, which the people were asked to sign, and which the Church, after considering it, might sustain or reject. The sustaining of the Call was held to be a necessary step in the process of induction, and the Church Courts alone judged how far it was sufficiently signed, and ought to be sustained. They uniformly considered themselves as entitled, in this way, to give effect to the will of the people, even although it might limit, to a certain extent, the right of the Patron. They actually did so, in the several cases as they occurred; and their right to do so was never called in question by the Civil Courts. The Church Courts gave various decisions on the several cases, more or less favourable to the people, but all proceeding on the understanding that the right of Patronage was not unrestricted, but was liable to be controlled by the will of the people, under the jurisdiction of the Church Courts. In process of time, the decisions of the Church Courts became uniformly of one character, tending to a rigorous enforcement of the law of Patronage. But this took place solely through the judgments of the Church Courts themselves, exercising their right, in each case, to pronounce sentence on the sustaining of the Call, and it did not take place without many decisions of a contrary nature, nor without a large minority always contending and protesting against the kind of decisions which began to prevail. Still the Civil Courts did not interfere, although they might have had opportunities of doing so. They were not asked to interfere. In

1736, 1740, 1752, and 1768, cases occurred of Presentees being rejected by the Church Courts, on the ground of the opposition of the people. And the decisions of the Church were held valid. There was no decision of the Civil Court, prior to that on the Auchterarder case, giving such an interpretation of the law of Patronage, as could lead to the supposition that it was not subject to the restriction implied in the Church's right to require a Call or concurrence on the part of the people, and to judge of the sufficiency of the Call. The necessity of passing the recent Act of the Assembly did not arise from any doubt in regard to the power of the Church to give effect to the will of the people, according to the old constitutional method, but from the relaxation which in practice had occurred in the Church's exercise of that power. It seemed reasonable, when the General Assembly came to be of the same opinion with that minority who would have decided the cases differently, that a declaratory enactment should be passed, to set the question at rest, so far at least as the proceedings of the Church's own judicatories in regard to it are concerned;—an enactment which substantially does nothing more than declare in what manner the Church now considers that these cases might have been and ought to have been decided.

It may be proper to remark that these facts are referred to, not as affecting the grounds of the recent decisions of the Civil Courts, but for the purpose of showing the position which the Church has hitherto been understood to occupy under the law of Patronage, and enforcing the reasonableness of such a modification of that law, as the Church now, in accordance with its avowed principles, respectfully asks.

NOTE referred to in Page 4.

The following is an Extract from a NOTE which I received from the Rev. THOMAS M'CRIE :—

The Dean of Faculty, in his extraordinary Pamphlet, refers to an Address (p. 158) as having been published by the Associate Synod of Seceders, lately admitted into the Church of Scotland. That Address was emitted by the Synod to which I belong, and let its demerits be what they may, the Old Light Burghers are not responsible for it. The similarity of the name Original Seceders, to that of Original Burghers (two designations which have often been confounded of late, and no wonder,) has misled the Dean; so that one part of his *brief* on which he seems to lay great stress, falls to the ground. I do not know if the members of the Associate Synod who have joined the Church would subscribe to the sentiments of that Address quoted by the Dean; and it is remarkable that he did not discover in perusing that document, that the part to which he refers was written expressly to show the grounds on which we, as a Synod, could not at present contemplate uniting with the Church, even on the grounds which satisfied the Burghers' Synod. Whatever the Burghers may think, it is certain, that we do not think that the Church has made such *concession* as amount to the terms stated in that Address.

THE END.

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